CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

Bureau of Customs and Border Protection

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 38 **AUGUST 18, 2004** **NO. 34**

This issue contains:

DEPARTMENT OF HOMELAND SECURITY
BUREAU OF CUSTOMS AND BORDER PROTECTION

NOTICE

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Bureau of Customs and Border Protection

General Notices

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, August 4, 2004,

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
Acting Assistant Commissioner,
Office of Regulations and Rulings.

REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF PORTABLE LOCKING GUN CASES

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of revocation of a tariff classification ruling letter and revocation of any treatment relating to the classification of portable locking gun cases.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking one ruling letter relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of portable locking gun cases. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on June 23, 2004, in the *Customs Bulletin* in Volume 38, Number 26. One comment was received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 17, 2004.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textiles Branch, (202) 572–8822.

SUPPLEMENTARY INFORMATION

Background

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with CBP laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. section 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the *Customs Bulletin* on June 23, 2004, proposing to revoke one ruling letter pertaining to the tariff classification of portable locking gun cases. One comment was received in response to this notice.

As stated in the notice of proposed modification, although CBP is specifically referring to the modification of New York Ruling Letter (NY) G89340, dated April 2, 2001, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice, memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP in-

tends to revoke any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY G89340, CBP ruled that item numbers SGS–1124R and SGS–1125R were classifiable in subheading 7616.99.5090, HTSUSA, which provides for "Other articles of aluminum: Other: Other: Other, Other: Other: Other". Since the issuance of this ruling, CBP has reviewed the classification of these items and has determined that the cited ruling is in error.

One comment was received in response to the notice of proposed revocation. The commentor suggests that, pursuant to a GRI 3(a) or (c) analysis, the subject articles are classifiable as "reinforced safes" in heading 8303, HTSUSA. We disagree with the commentor's assertion that these articles are classifiable pursuant to a GRI 3 analysis, based on the claim that they are *prima facie* classifiable both as "gun cases" in heading 4202, HTSUSA, and as "safes" in heading 8303, HTSUSA. The subject articles are not "reinforced safes" within the meaning of heading 8303, HTSUSA. The commentor also observes that the term "gun cases" appears in two places in the tariff language, these being in heading 4202 and GRI 5(a). However, the commentor goes on to assert, incorrectly, that "Because there is no other descriptive/limiting language, the terms must be defined in the same manner." The commentor argues that the articles in question are expensive, after-market accessories that are never sold with the firearms. In our opinion, these are exactly the types of containers that are contemplated as being *eo nomine* provided for as "gun cases" of heading 4202, HTSUSA. In this instance, GRI 5(a) is not applicable because it applies to gun cases which have been specially shaped and fitted to contain a specific gun or guns, and which are imported and sold with the contents. In accordance with GRI 5(a), such gun cases shall be classified with the firearm(s). There is nothing in the language set forth in GRI 5(a) which would limit or preclude the classification of "gun cases" sold without a firearm from being eo nomine provided for as "gun cases" of heading 4202, HTSUSA.

We have now determined that the subject gun cases, identified as item numbers SGS–1124R and SGS–1125R, should be classified in subheading 4202.99.9000, HTSUSA, which provides for "Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels,

spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or paperboard, or wholly or mainly covered with such materials or with paper: Other: Other: Other", which accurately describes the merchandise. Heading 4202, HTSUSA, has *eo nomine* provided for "gun cases" which, in this instance, would include all forms of the article because there are no terms of limitation associated with this exemplar. Furthermore, the 42.02 EN notes that the containers of this heading may be rigid or with a rigid foundation and since "gun cases" are included in the first part of the heading, before the semi-colon, they may be of any material.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY G89340, dated April 2, 2001, and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 967109 (Attachment). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin.*

Dated: July 30, 2004

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967109
July 30, 2004
CLA–2 RR:CR:TE 967109 ASM
CATEGORY: Classification
TARIFF NO.: 4202.99.9000

MS. KERRIE L. GOODYEAR
GLOBAL FAIRWAYS
6680 Brandt St., Suite 100
Romulus, MI 48174

RE: Revocation of NY G89340; Classification of Portable Locking Gun Cases; Containers of Heading 4202, HTSUSA

DEAR MS. GOODYEAR:

This is in regard to the Customs and Border Protection (CBP) New York Ruling Letter (NY) G89340, issued to you on April 2, 2001. We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling revokes NY G89340 by providing the correct classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) for portable locking gun cases.

Pursuant to section 625(c), Tariff Act of 1930, as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub.L. 103–182, 107 Stat. 2057, 2186 (1993) notice of the proposed revocation of NY G89340 was published on June 23, 2004, in Vol. 38, No. 26 of the *Customs Bulletin*. One comment was received in response to this notice.

FACTS:

The merchandise involves two styles of portable gun cases (item numbers SGS–1124R; SGS–1125R). The article identified as item number SGS–1124R is a rectangular shape (outside dimensions - 16.5 x 8.5 x 9 inches) double pistol case, constructed of aluminum, which stores up to 4 pistols. The case features an ergonomic carrying handle, heavy-duty combination locks, and reinforced metal corners. The interior of the case includes impact resistant foam. The case is approved for airline travel and includes a zippered travel cover. The article identified as item number SGS–1125R is a rectangular shape (outside dimensions - 32 x 8.5 x 13.5 inches) double breakdown case constructed of aluminum which stores two break down shot guns. The case features mylar wheels built into the case for travel convenience, an ergonomic carrying handle, and an interior with impact resistant foam. The outside of the case has been reinforced with metal corners and is fitted with heavy-duty key locks and combination locks. The case has been approved for airline travel and includes a zippered travel cover.

In NY G89340, dated April 2, 2001, CBP found that item numbers SGS–1124R and SGS–1125R were classified in subheading 7616.99.5090, HTSUSA, which provides for "Other articles of aluminum: Other: Other: Other, Other: Other: Other".

ISSUE:

What is the proper classification for the merchandise?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 4202, HTSUSA, is a two part heading which covers only the articles specifically named therein and similar containers. In this instance, we are concerned with the first portion of the heading which covers trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers.

One comment was received in response to the proposed revocation of NY G89340. The commentor suggests that, pursuant to a GRI 3(a) or (c) analysis, the subject articles are classifiable as "reinforced safes" in heading 8303, HTSUSA.

We disagree with the commentor's assertion that these articles are classifiable pursuant to a GRI 3 analysis, based on the claim that they are *prima facie* classifiable both as "gun cases" in heading 4202, HTSUSA, and as "safes" in heading 8303, HTSUSA. The subject articles are not "reinforced safes" within the meaning of heading 8303, HTSUSA. The EN's to heading 8303, provide:

> This heading covers containers and strong-room doors designed for securing valuables, jewels, documents, etc., against theft and fire.
>
> Safes and strong-boxes of this heading are steel containers of which the walls are **armoured** (i.e., made of high-strength alloy steel) or of sheet steel reinforced with, for example, reinforced concrete. They are used in banks, offices, hotels, etc. They are fitted with very secure locks and often with air-tight doors and double walls, the intervening space usually being filled with heat-resistant materials. The heading includes strong-room doors (whether or not with door frames) and safe deposit lockers for strong-rooms as used in banks, safe deposits, factories, etc., where larger storage space is required.
>
> The heading also includes metal cash or deed boxes (with or without internal compartments). These are portable boxes (incorporating a key-operated or a combination lock), sometimes with double walls, which by virtue of their design, constituent material, etc., offer reasonable protection against theft and fire. Collecting-boxes, money-boxes, etc., also fall in the heading, **provided** they have similar provisions for security; otherwise they are classified according to the constituent metal or as toys.

The subject articles are containers, which require a locking system that is necessary for the portability and transportation of inherently dangerous objects, i.e., "break down shot guns" and "pistols". Although we recognize that

the aluminum exterior, reinforced metal corners, and heavy duty locks may also serve to prevent against theft and fire damage, the promotional literature specifically identifies each article as a gun "case" that has been designed to safely carry multiple firearms during travel. Furthermore, these cases have been designed with the following features typically found in containers for travel: ergonomic carrying handle, zippered travel cover, mylar wheels built into the case for travel convenience (SGS–1125RW), and both cases are approved for airline travel. However, there is nothing in the advertising literature which specifically promotes the use of either container as a "safe" to protect the contents against theft and fire. We also disagree with the commentor's assertion that the subject articles are not *eo nomine* provided for as "gun cases," but are merely similar to "gun cases." The commentor observes that the term "gun cases" appears in two places in the tariff language, these being heading 4202 and GRI 5(a). However, the commentor goes on to assert, incorrectly, that "Because there is no other descriptive/limiting language, the terms must be defined in the same manner." The commentor argues that the articles in question are expensive, after-market accessories that are never sold with the firearms. In our opinion, these are exactly the types of containers that are contemplated as being *eo nomine* provided for as "gun cases" of heading 4202, HTSUSA. In this instance, GRI 5(a) is not applicable because it applies to gun cases which have been specially shaped and fitted to contain a specific gun or guns, and which are imported and sold with the contents. In accordance with GRI 5(a), such cases shall be classified with the firearm(s). There is nothing in the language set forth in GRI 5(a) which would limit or preclude the classification of "gun cases" sold without a firearm from being *eo nomine* provided for as "gun cases" of heading 4202, HTSUSA.

As noted above, "gun cases" is an *eo nomine* exemplar in heading 4202, HTSUSA. As such, "gun cases" is not a use provision because the term describes the merchandise by name, not by use. See Clarendon Marketing, Inc. v. United States, 144 F.3d 1464, 1467 (Fed. Cir. 1998); and Nidec Corp. v. United States, 68 F.3d 1333, 1336 (Fed Cir. 1995). It is also important to note that "An eo nomine designation, with no terms of limitation, will ordinarily include all forms of the named article." Hayes-Sammons Co. v. United States, 55 C.C.P.A. 69, 75 (1968). Accordingly, a use limitation should not be read into an *eo nomine* provision unless the name itself inherently suggests a type of use. See Pistorino & Co. v. United States, 599 F.2d 444, 445 (CCPA 1979); United States v. Quon Quon Co., 46 C.C.P.A. 70, 72–73 (1959); F.W. Myers & Co. v. United States, 24 Cust. Ct. 178, 184–85, (1950).

Heading 4202, HTSUSA, has *eo nomine* provided for "gun cases" which, in this instance, would include all forms of the article because there are no terms of limitation associated with this exemplar. Furthermore, the 42.02 EN notes that the containers of this heading may be rigid or with a rigid foundation and since "gun cases" are included in the first part of the heading, before the semi-colon, they may be of any material. See 42.02 EN.

In Totes, Inc. v. United States, 18 C.I.T. 919, 865 F. Supp. 867, 871 (1994), the Court of International Trade concluded that the "essential characteristics and purpose of the Heading 4202 exemplars are . . . to organize, store, protect and carry various items." In this instance, the subject case, unlike any of the exemplars in the EN to heading 3926, is intended to store, protect, organize and transport a gun either inside or outside the home.

We further note the following dictionary definition for "case" taken from the 1979 Webster's New Collegiate Dictionary, i.e., ". . . a box or receptacle for holding something . . . ". Thus, a "case" could conceivably include any type of receptacle, stationary or portable, designed to hold something. In fact, the promotional literature for the subject gun cases (item numbers SGS–1124R and SGS–1125R) specifically promotes the portability features of these cases, *e.g.*, ergonomic carrying handle, zipper travel cover, approved for airline travel, mylar wheels built into the case (item number SGS–1125R).

In a recent CBP ruling, HQ 966544, dated March 2, 2004, it was held that a portable traveling gun case, featuring carrying handles, fitted key and combination locks, and approved for airline travel, was classifiable as a container of subheading 4202.99.9000, HTSUSA. We further note that CBP has previously classified articles identified as gun cases in heading 4202, HTSUSA. NY G85641, dated February 12, 2001, involved the tariff classification of gun cases and a determination as to preferential treatment under the Caribbean Basin Economic Recovery Act (CBERA). In that ruling, the samples consisted of upper and lower shells of pressed wood formed to shape the main body of the case. The fur-lined interior was fitted to hold the gun/accessories by means of wood blocks and dividers. The samples submitted each had carrying handles and varying exteriors of textile and leather. With respect to the classification of all the textile covered cases (Style 1215, 1215DW, 1215D, and 1215E), CBP found that those gun cases were each classifiable in subheading 4202.92, HTSUSA. In NY K82654, dated February 5, 2004, a fitted gun case, with a carrying handle, manufactured of neoprene, and wholly covered on the exterior surface with polyester fabric, was deemed to be of a kind *eo nomine* provided for in heading 4202, HTSUSA.

In view of the foregoing, CBP has determined that item numbers SGS–1124R and SGS–1125R, are properly classified as gun cases in heading 4202, HTSUSA, and are *eo nomine* provided for in the exemplars for that heading.

HOLDING:

NY G89340, dated April 2, 2001, is hereby revoked.

The subject gun cases, identified as item numbers SGS–1124R and SGS–1125R, are classified in subheading 4202.99.9000, HTSUSA, which provides for "Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or paperboard, or wholly or mainly covered with such materials or with paper: Other: Other: Other." The general column one duty rate is 20% percent ad valorem.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

WITHDRAWAL OF PROPOSED REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN CARBON-LINED CLOTHING AND CARBON-IMPREGNATED FABRIC

AGENCY: Bureau of Customs and Border Protection; Department of Homeland Security.

ACTION: Notice of withdrawal of proposed revocation of two ruling letters and revocation of treatment relating to the classification of certain carbon-lined clothing and carbon-impregnated fabric.

SUMMARY: This notice advises interested parties that the Bureau of Customs and Border Protection (CBP) is withdrawing its proposal to revoke two ruling letters pertaining to the tariff classification of certain carbon-lined clothing and carbon-impregnated fabric and to revoke any treatment previously accorded by CBP to substantially identical transactions.

DATE: August 18, 2004.

FOR FURTHER INFORMATION CONTACT: Brian Barulich, Textiles Branch: (202) 572–8883.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice proposing to revoke New York Ruling Letter (NY) G86317, dated January 25, 2001, and NY F83890, dated March 24, 2000, was published on May 19, 2004, in Vol. 38, No. 21, of the Customs Bulletin. Both rulings pertained to the tariff classification of certain carbon-lined clothing and carbon-impregnated fabric, samples of which were destroyed in the September 11, 2001 terrorist attack. After analyzing the comments received on the proposed revocation, CBP has determined not to proceed with the revocation because the samples were critical to a precise classification.

Therefore, this notice advises interested parties that CBP is withdrawing its proposed revocation of the rulings set forth above. NY G86317 and NY F83890 remain in full force and effect.

DATED: July 30, 2004

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFCATION OF TRUCK ENGINE FAN CLUTCHES

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed revocation of tariff classification of six rulings with respect to the tariff classification of truck fan clutches and drive hubs

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182,107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) intends to revoke nine rulings relating to the tariff classification, under the Harmonized Tariff Schedule of the United States, (HTSUS), of truck fan clutches and drive hubs. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before September 17, 2004.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, Mint Annex, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, General Classification Branch, at (202) 572–8721.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade com-

munity needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(1)), this notice advises interested parties that CBP intends to revoke nine rulings relating to the tariff classification of truck fan clutches and drive hubs. Although in this notice CBP is specifically referring to New York Ruling Letters ("NY") I88480 dated December 6, 2002, (Attachment A), NY I88481 dated December 6, 2002, (Attachment B), NY I88482 dated December 6, 2002 (Attachment C), NY I88483 dated December 6, 2002, (Attachment D), NY I88484 dated December 6, 2002 (Attachment E), NY I89250, dated December 11, 2002, (Attachment F), NY I89251 dated December 11, 2002, (Attachment G), NY I89252 dated December 11, 2002 (Attachment H), and NY I89253 dated December 11, 2002, (Attachment I) this notice covers any rulings on this merchandise that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625 (c)(2)), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUS. Any person involved with substantially identical merchandise should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY I88480 NY I88481, NY I88482, NY I 88483, NY I88484, NY I89250, NY I89251, NY I89252, and NY I89253, CBP classified engine cooling fan clutches and truck drive hubs in subheading 8708.99.80, HTSUS, which provides for "Parts and accessories of the motor vehicles of 8701 to 8705: Other: Other: Other."

Based on the information and material available, CBP has determined that the engine fan clutch is an integral part of an internal combustion engine, and thus under Section XVII, Note 2(e), it is excluded from being classified in heading 8708, as a part of a motor vehicle. CBP has also concluded that under Section XVI Note 2(a), HTSUS, the engine fan clutches fall within an eo nomine provision for clutches, Heading 8483, HTSUS. Consequently, it is now CBP's position that the engine fan clutch is classified in subheading 8483.60.4040, HTSUS, which provides for "Transmission shafts . . . Clutches and universal joints".

Pursuant to 19 U.S.C. § 1625(c)(1), CBP intends to revoke NY I88480, NY I88481, NY I88482, NY I88483, NY I88484, NY I89250, NY I89251 NY I89252, and NY I89253. CBP also intends to revoke any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 966972 (Attachment J). Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

DATED: July 29, 2004

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY I88480
December 6, 2002
CLA–2–87:RR:NC:MM:101 I88480
CATEGORY: Classification
TARIFF NO.: 8708.99.8080

MR. THOMAS SCHILLINGER
MATERIALS MANAGER
HORTON, INC.
10840 423rd Avenue
Britton, South Dakota 57430

RE: The tariff classification of a truck HTS/S Cooling Fan Clutch from Germany

DEAR MR. SCHILLINGER:

In your letter dated November 8, 2002 you requested a tariff classification ruling.

You submitted a sample, printed material and a technical drawing of a HTS/S Cooling Fan Clutch. This item is mounted on the engine and is belt driven. This fan has a friction interface and is spring engaged and pneumatic disengaged. The HTS/S Cooling Fan Clutch is used to assist in the cooling of the internal combustion engine that are installed in medium and heavy-duty trucks and buses. They utilize the rotational energy of the engine either directly or via a drive belt to rotate a cooling fan or a cooling fan and fan clutch that draws air through the engine-cooling package. They are capable of engaging and disengaging the fan from the rotational motion of the engine and are controlled by sensors that signal the need for cooling.

The applicable subheading for the HTS/S Cooling Fan Clutch will be 8708.99.8080, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Other . . . Other. The rate of duty will be 2.5% ad valorem.

This duty rate will remain unchanged in the year 2003.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 646–733–3008.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY I88481
December 6, 2002
CLA–2–87:RR:NC:MM:101 I88481
CATEGORY: Classification
TARIFF NO.: 8708.99.8080

MR. THOMAS SCHILLINGER
MATERIALS MANAGER
HORTON, INC.
10840 423rd Avenue
Britton, South Dakota 57430

RE: The tariff classification of a truck Viscous Fan Clutch from Germany

DEAR MR. SCHILLINGER:

In your letter dated November 8, 2002 you requested a tariff classification ruling.

You submitted a sample, printed material and a technical drawing of a Viscous Cooling Fan Clutch. This item is mounted on the engine and is belt driven. This fan has a friction interface and is spring engaged and pneumatic disengaged. It is activated via temperature sensors in the engine cooling system. The Viscous Fan Clutch is used to assist in the cooling of the internal combustion engine that are installed in medium and heavy-duty trucks and buses. They utilize the rotational energy of the engine either directly or via a drive belt to rotate a cooling fan or a cooling fan and fan clutch that draws air through the engine-cooling package. They are capable of engaging and disengaging the fan from the rotational motion of the engine and are controlled by sensors that signal the need for cooling.

The applicable subheading for the Viscous Cooling Fan Clutch will be 8708.99.8080, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Other . . . Other. The rate of duty will be 2.5% ad valorem.

This duty rate will remain unchanged in the year 2003.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 646–733–3008.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY I88482
December 6, 2002
CLA–2–87:RR:NC:MM:101 I88482
CATEGORY: Classification
TARIFF NO.: **8708.99.8080**

MR. THOMAS SCHILLINGER
MATERIALS MANAGER
HORTON, INC.
10840 423rd Avenue
Britton, South Dakota 57430

RE: The tariff classification of a truck PTO Fan Clutch from Germany

DEAR MR. SCHILLINGER:

In your letter dated November 8, 2002 you requested a tariff classification ruling.

You submitted a sample, printed material and a technical drawing of a PTO Fan Clutch. This item is mounted on the engine and is belt driven. This fan has a friction interface and is spring engaged and pneumatic disengaged. The PTO Fan Clutch is mounted directly to the engine crankshaft and has a friction interface with a pneumatic engagement and spring disengagement. It is activated via temperature sensors in the engine cooling system. The PTO Fan Clutch is used to assist in the cooling of the internal combustion engine that are installed in medium and heavy-duty trucks and buses. They utilize the rotational energy of the engine either directly or via a drive belt to rotate a cooling fan or a cooling fan and fan clutch that draws air through the engine-cooling package. They are capable of engaging and disengaging the fan from the rotational motion of the engine and are controlled by sensors that signal the need for cooling.

The applicable subheading for the PTO Fan Clutch will be **8708.99.8080**, Harmonized Tariff Schedule of the United States (HTS), which provides for *Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Other . . . Other. The rate of duty will be 2.5% ad valorem.*

This duty rate will remain unchanged in the year 2003.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 646–733–3008.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY I88483
December 6, 2002
CLA–2–87:RR:NC:MM:101 I88483
CATEGORY: Classification
TARIFF NO.: 8708.99.8080

MR. THOMAS SCHILLINGER
MATERIALS MANAGER
HORTON, INC.
10840 423rd Avenue
Britton, South Dakota 57430

RE: The tariff classification of a truck Drivemaster Cooling Fan Clutch from Germany

DEAR MR. SCHILLINGER:

In your letter dated November 8, 2002 you requested a tariff classification ruling.

You submitted a sample, printed material and a technical drawing of a Drivemaster Cooling Fan Clutch. This item is mounted on the engine and is belt driven. This fan has a friction interface and is spring engaged and pneumatic disengaged. It is activated via temperature sensors in the engine cooling system. The Drivemaster Cooling Fan Clutch is used to assist in the cooling of the internal combustion engine that are installed in medium and heavy-duty trucks and buses. They utilize the roataional energy of the engine either directly or via a drive belt to rotate a cooling fan or a cooling fan and fan clutch that draws air through the engine cooling package. They are capable of engaging and disengaging the fan from the rotational motion of the engine and are controlled by sensors that signal the need for cooling.

The applicable subheading for the Drivemaster Cooling Fan Clutch will be 8708.99.8080, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Other . . . Other. The rate of duty will be 2.5% ad valorem.

This duty rate will remain unchanged in the year 2003.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 646–733–3008.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY I88484
December 6, 2002
CLA–2–87:RR:NC:MM:101 I88484
CATEGORY: Classification
TARIFF NO.: 8708.99.8080

MR. THOMAS SCHILLINGER
MATERIALS MANAGER
HORTON, INC.
10840 423rd Avenue
Britton, South Dakota 57430

RE: The tariff classification of a truck Drive Hub from Germany

DEAR MR. SCHILLINGER:

In your letter dated November 8, 2002 you requested a tariff classification ruling.

You submitted a sample and a technical drawing of a Drive Hub - an engine mounted bracket with a pulley for direct drive belt engagement and mounting surface for a fan clutch.

The PTO fan clutch is mounted directly to the engine crankshaft and has a friction interface with a pneumatic engagement and spring disengagement.

This item is used to assist in the cooling of an internal combustion engine that are installed in mostly medium and heavy-duty trucks and buses. They utilize the rotational energy of the engine either directly of via a drive belt to rotate a cooling fan or cooling fan and fan clutch that draws air through the engine-cooling package. They are capable of engaging and disengaging the fan from the rotational motion of the engine and are controlled by sensors that signal the need for cooling.

The applicable subheading for the Drive Hub will be 8708.99.8080, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Other . . . Other. The rate of duty will be 2.5% ad valorem.

This duty rate will remain unchanged in the year 2003.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 646–733–3008.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY I89250
December 11, 2002
CLA–2–87:RR:NC:MM:101 I89250
CATEGORY: Classification
TARIFF NO.: 8708.99.8080

MR. THOMAS SCHILLINGER
MATERIALS MANAGER
HORTON, INC.
10840 423rd
Britton, South Dakota 57430

RE: The tariff classification of a truck HTS/S Cooling Fan Clutch from the United States

DEAR MR. SCHILLINGER:

In your letter dated November 8, 2002 you requested a tariff classification ruling. New York Ruling **NY I88480** was issued with the incorrect country of origin (Germany) of the HTS/S Cooling Fan Clutch. This office has subsequently been notified that the correct country of origin of the HTS/S Cooling Fan Clutch is the United States. This ruling is being issued to correct that error.

You submitted a sample, printed material and a technical drawing of a HTS/S Cooling Fan Clutch. This item is mounted on the engine and is belt driven. This fan has a friction interface and is spring engaged and pneumatic disengaged. The HTS/S Cooling Fan Clutch is used to assist in the cooling of the internal combustion engine that are installed in medium and heavy-duty trucks and buses. They utilize the rotational energy of the engine either directly or via a drive belt to rotate a cooling fan or a cooling fan and fan clutch that draws air through the engine-cooling package. They are capable of engaging and disengaging the fan from the rotational motion of the engine and are controlled by sensors that signal the need for cooling.

The applicable subheading for the HTS/S Cooling Fan Clutch will be 8708.99.8080, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Other . . . Other.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 646–733–3008.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT G]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY I89251
December 11, 2002
CLA–2–87:RR:NC:MM:101 I89251
CATEGORY: Classification
TARIFF NO.: 8708.99.8080

MR. THOMAS SCHILLINGER
MATERIALS MANAGER
HORTON, INC.
10840 423rd Avenue
Britton, South Dakota 57430

RE: The tariff classification of a truck PTO Fan Clutch from the United States

DEAR MR. SCHILLINGER:

In your letter dated November 8, 2002 you requested a tariff classification ruling. New York Ruling **NY I88482** was issued with the incorrect country of origin (Germany) of the PTO Fan Clutch. This office has subsequently been notified that the correct country of origin of the PTO Fan Clutch is the United States. This ruling is being issued to correct that error.

You submitted a sample, printed material and a technical drawing of a PTO Fan Clutch. This item is mounted on the engine and is belt driven. This fan has a friction interface and is spring engaged and pneumatic disengaged. The PTO Fan Clutch is mounted directly to the engine crankshaft and has a friction interface with a pneumatic engagement and spring disengagement. It is activated via temperature sensors in the engine cooling system. The PTO Fan Clutch is used to assist in the cooling of the internal combustion engine that are installed in medium and heavy-duty trucks and buses. They utilize the rotational energy of the engine either directly or via a drive belt to rotate a cooling fan or a cooling fan and fan clutch that draws air through the engine-cooling package. They are capable of engaging and disengaging the fan from the rotational motion of the engine and are controlled by sensors that signal the need for cooling.

The applicable subheading for the PTO Fan Clutch will be 8708.99.8080, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Other . . . Other.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 646–733–3008.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT H]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY I89252
December 11, 2002
CLA–2–87:RR:NC:MM:101 I89252
CATEGORY: Classification
TARIFF NO.: 8708.99.8080

MR. THOMAS SCHILLINGER
MATERIALS MANAGER
HORTON, INC.
10840 423rd Avenue
Britton, South Dakota 57430

RE: The tariff classification of a truck Drivemaster Cooling Fan Clutch from the United States

DEAR MR. SCHILLINGER:

In your letter dated November 8, 2002 you requested a tariff classification ruling. New York Ruling **NY I88483** was issued with the incorrect country of origin (Germany) of the Drivemaster Cooling Fan Clutch. This office has subsequently been notified that the correct country of origin of the Drivemaster Cooling Fan Clutch is the United States. This ruling is being issued to correct that error.

You submitted a sample, printed material and a technical drawing of a Drivemaster Cooling Fan Clutch. This item is mounted on the engine and is belt driven. This fan has a friction interface and is spring engaged and pneumatic disengaged. It is activated via temperature sensors in the engine cooling system. The Drivemaster Cooling Fan Clutch is used to assist in the cooling of the internal combustion engine that are installed in medium and heavy-duty trucks and buses. They utilize the roatational energy of the engine either directly or via a drive belt to rotate a cooling fan or a cooling fan and fan clutch that draws air through the engine cooling package. They are capable of engaging and disengaging the fan from the rotational motion of the engine and are controlled by sensors that signal the need for cooling.

The applicable subheading for the Drivemaster Cooling Fan Clutch will be 8708.99.8080, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Other . . . Other.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 646–733–3008.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT I]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY I89253
December 11, 2002
CLA–2–87:RR:NC:MM:101 I89253
CATEGORY: Classification
TARIFF NO.: 8708.99.8080

MR. THOMAS SCHILLINGER
MATERIALS MANAGER
HORTON, INC.
10840 423rd Avenue
Britton, South Dakota 57430

RE: The tariff classification of a truck Drive Hub from the United States

DEAR MR. SCHILLINGER:

In your letter dated November 8, 2002 you requested a tariff classification ruling. New York Ruling **NY I88484** was issued with the incorrect country of origin (Germany) of the Drive Hub. This office has subsequently been notified that the correct country of origin of the Drive Hub is the United States. This ruling is being issued to correct that error.

You submitted a sample and a technical drawing of a Drive Hub – an engine mounted bracket with a pulley for direct drive belt engagement and mounting surface for a fan clutch. The PTO fan clutch is mounted directly to the engine crankshaft and has a friction interface with a pneumatic engagement and spring disengagement. This item is used to assist in the cooling of an internal combustion engine that are installed in mostly medium and heavy-duty trucks and buses. They utilize the rotational energy of the engine either directly of via a drive belt to rotate a cooling fan or cooling fan and fan clutch that draws air through the engine-cooling package. They are capable of engaging and disengaging the fan from the rotational motion of the engine and are controlled by sensors that signal the need for cooling.

The applicable subheading for the Drive Hub will be 8708.99.8080, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other: Other . . . Other.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 646–733–3008.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT J]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 966972
CLA–RR:CR:GC 966972 RSD
CATEGORY: Classification
TARIFF NO. 8483.60.4040

MR. THOMAS SCHILLINGER
MATERIALS MANAGER
HORTON, INC.
10840 423rd Avenue
Britton, South Dakota 57430

RE: Truck Engine Cooling Fan Clutches; Revocation of NY I88480, NY I88481, NY I88482, NY I88483, NY I88484, NY I89250, NY I89251, NY I89252, and NY I89253

DEAR MR. SCHILLINGER:

This is in regards to your letter dated November 8, 2002, requesting a ruling concerning the classification of a cooling fan clutch for a internal combustion engine of a medium and heavy-duty truck under the Harmonized Tariff Schedule of the United States ("HTSUS"). In response to this request, on December 6, 2002 and December 11, 2002, the National Commodity Specialist Division ("NCSD"), New York issued a series of rulings, NY I88480, NY I88481, NY I88482, NY I88483, NY I88484, NY I89250, NY I89251, NY I89252, and NY I89253. In these rulings, Customs and Border Protection (CPB) ruled that engine cooling fan clutches were classified in subheading 8708.99.8080, HTSUS. We now believe that the classification of the engine fan clutches indicated in these rulings is incorrect. This ruling sets forth the correct classification of engine cooling fan clutches.

FACTS:

The engine cooling fan clutch is a small fluid coupling with a thermostatic device that controls a variable–speed fan. The fan clutch ensures that the fan will rotate at just the right speed to keep the engine from overheating and reduces the drive to the fan when it is no longer needed. Typically, a fan clutch is belt-driven and is mounted on the front of the engine. The fan has a friction interface and is spring-engaged and pneumatically disengaged. The fan clutch is mounted directly to the engine crankshaft. It is activated via temperature sensors in the engine cooling system.

The engine fan clutch is used to assist in the cooling of internal combustion engines that are installed in trucks and buses. It utilizes the rotational energy of the engine either directly or indirectly via a drive belt to rotate a cooling fan. The cooling fan and the fan clutch draws air through the engine-cooling package. They are capable of engaging and disengaging the fan from the rotational motion of the engine under the direction of sensors that signal the need for cooling. A manual or thermally regulated switch also controls the fan clutch. When the engine temperature becomes too high, the switch will trigger the fan clutch. This causes the fan clutch to turn the fan, drawing air through the radiator and cooling the engine air. Without the fan clutch, the fan would not spin at an adequate speed. Thus, the engine would

not be sufficiently cooled and it would overheat rather quickly and be damaged.

Previously, Customs and Border Protection (CBP) has issued rulings that classified fan clutches used in motor vehicles in different headings of the HTSUS. In the rulings issued to Horton Inc. concerning engine fan clutches, NY I88480 dated December 6, 2002, NY I88481 dated December 6, 2002, NY I88482 dated December 6, 2002, NY I88483 dated December 6, 2002, NY I88484 dated December 6, 2002, NY I89250 dated December 11, 2002, NY I89251 dated December 11, 2002, NY I89252 dated December 11, 2002, and NY I89253, dated December 11, 2002, CBP classified the engine fan clutches in subheading 8708.99.80, HTSUS, as other, other parts of motor vehicles. In NY A84377 dated July 3, 1996, and NY J88108 dated September 16, 2003, CBP classified fan clutches in subheading 8483.60.40, HTSUS, as clutches.

ISSUE:

Whether the engine cooling fan clutches are classified in heading 8409, as parts suitable for use solely or principally with the engines of heading 8407 or 8408 or in heading 8483, as clutches and coupling (including universal joints) or in heading 8708 as parts and accessories of the motor vehicles of heading 8701 to 8705 under the HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The Harmonized Commodity Description And Coding System Explanatory Notes (EN's) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the EN's provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system. CPB believes the EN's should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The HTSUS provisions under consideration are as follows:

8409		Parts suitable for use solely or principally with the engines of heading 8407 or 8408:
		Other:
8409.91		Suitable for use solely or principally with spark-ignition internal combustion piston engines (including rotary engines):
8409.91.50		Other.

* * * * * * * * * * * *

8483	Transmission shafts (including camshafts and crankshafts) and cranks: bearing housings, housed bearing and plain shaft bearings; gears and gearing; ball or roller screws; gear boxes and other speed changers, including torque converters; flywheels and pulleys, including pulley blocks; clutches and shaft couplings (including universal joints):
8483.60	Clutches and shaft couplings (including universal joints):
8483.60.40	Clutches and universal joints.

* * * * * * * * * * * *

8708	Parts and accessories of the motor vehicles of heading 8701 to 8705:
8708.99	Other:
	Other:
8708.99.80	Other.

EN 84.83 (H) states the following:

(H) **CLUTCHES**

These are used to connect to disconnect the drive at will. They include:

Friction clutches in which rotating discs, rings, cones, etc. with frictions surfaces, can be engaged or disengaged; dog (claw) clutches in which the opposing members have projections and corresponding slots; automatic centrifugal clutches which engage or disengage according to the speed of rotation; compressed air clutches; hydraulic clutches; etc.

It is undisputed that the subject merchandise are clutches. The question that must be considered is how the fan clutches that will be attached to truck engines are classified. One of the competing headings is 8483, HTSUS is included in Section XVI. Section XVI Note 1(l) excludes articles of Section XVII from classification in Section XVI. Section XVII provides for "parts and accessories" of motor vehicles in Heading 8708, HTSUS. However, Section XVII, Note 2(e), limits the scope of the terms "parts" and "parts and accessories" by excluding articles of heading 8483 from classification in a heading in Section XVII provided they constitute integral parts of engines or motors. In other words, if the fan clutches are an integral part of an engine, they cannot be classified in heading 8708, HTSUS.

There is no dispute that the fan clutch is a part of the engine because it is dedicated to use solely with the engine, and it has no independent function. Although the fan clutch is a part, the issue that arises is whether it is an "integral part" within the meaning of Section XVII Note 2(e). Neither the HTSUS nor the EN's provide a definition for the term "integral". The Merriam-Webster On Line Dictionary gives the following definition for the word integral:

1 a : essential to completeness : **Consitutent**<an *integral* part of the curriculum > . . .
2 : composed of integral parts
3 : lacking nothing essential

After reviewing the information available, we believe that the fan clutch is necessary to complete the engine. By regulating the speed of the engine fan, the fan clutch ensures that there is a proper airflow to the engine's cooling system, and thus it helps maintain a proper engine temperature. The engine fan must rotate at the right speed to ensure that the engine reaches an adequate temperature, so that the engine can work efficiently. Even more significantly, if the fan does not rotate at a sufficient speed, the inadequate airflow could quickly cause the engine to overheat, which would severely damage it. In other words, the fan clutch is essential for the engine to function.

Although the fan clutch is not an internal part of the engine block, it is still permanently mounted onto the engine. In HQ 087166, dated November 1, 1990, we ruled that the language of Section XVII Note 2(e) does not require an integral part of an engine be an internal part of the engine block. Based on the fact that the fan clutch is essential to the function to an engine, we conclude that it is necessary to complete an engine and thus it is an integral part of an engine. Therefore, Section XVII, Note 2(e) precludes the fan clutches from being classified in a heading of Section XVII, HTSUS. This means that the fan clutches cannot be classified in Heading 8708, HTSUS, as parts for a motor vehicle. Consequently, we find that NY I 88480, NY I88481, NY I88482, NY I88483, NY I88484, NY I89250, NY I89251, NY I89252, and NY I89253 incorrectly determined that the fan clutches were classified in heading 8708.

In classifying the fan clutches, which are integral parts of internal combustion engines, we apply Section XVI Note 2, which states in pertinent part that parts of machines are to be classified according to the following rules:

> (a) Parts which are goods included in any of the headings of chapters 84 and 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8455, 8503 8522, 8529, 8538 and 8548) *are in all cases to be classified in the respective headings* [Emphasis added];.
>
> (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. . .

In considering Note 2(a) and Note 2(b), respectively, it is necessary to determine whether the fan clutches at issue can be classified by themselves, or only as parts suitable for use solely or principally with spark-ignition internal combustion piston engines. If the fan clutches are separately classifiable as a product of chapter 84 or 85, Note 2(a) is applicable and they will be classified in their respective heading, regardless of the fact that they are a part of an internal combustion engine. If the fan clutches cannot be classified separately as a product of chapter 84 or 85, then Note 2(b) is applicable and they will be classified under heading 8409, HTSUS as a part of a spark-ignition internal combustion piston engine. Clutches are provided for eo nomine in heading 8483, HTSUS. The engine fan clutches at issue are clutches, and thus, Section XVI Note 2(a) is applicable. Therefore, by application of Section XVI Note 2(a), classification as a part of a motor vehicle engine in heading 8409, is precluded and the engine fan clutches are classified in heading 8483, HTSUS, a heading for clutches. This position is consistent

with CBP's determination in NY A84377 and NY J88108 which correctly determined that the engine fan clutches are classified in subheading 8483.60.40, HTSUS, as clutches.

HOLDING:

The truck engine cooling fan clutches are classified in subheading 8483.60.4040, Harmonize Tariff Schedule of the United States Annotated (HTSUSA) as: Transmission shafts (including camshafts and crankshafts) cranks: bearing housings . . . ; clutches and shaft couplings (including universal joints): Clutches and shaft couplings (including universal joints): Clutches and universal joints: Clutches. The general, column one rate of duty for the fan clutches is 2.8 percent ad valorem. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the World Wide Web at www.USITC.gov.

EFFECT ON OTHER RULINGS:

NY I 88480 dated December 6, 2002, NY I88481 dated December 6, 2002, NY I88482 dated December 6, 2002, NY I88483, dated December 6, 2002, NY I 88484 dated December 6, 2002, NY I89250, dated December 11, 2002, NY I89251 dated December 11, 2002, NY I89252 dated December 11, 2002, and NY I89253, dated December 11, 2002 are revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO CLASSIFICATION OF CALIBRATION LAMPS

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to tariff classification of calibration lamps.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of calibration lamps and to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before September 17, 2004.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, NW, Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, General Classification Branch, (202) 572–8782.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of calibration lamps. Although in this notice Customs is specifically referring to one ruling, NY 802832, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY 802823, dated October 31, 1994, set forth as "Attachment A" to this document, Customs found that a krypton lamp and a deuterium lamp used as calibration lamps in Space Telescope Image Spectrograph for the Hubble Space Telescope were classified in subheading 9031.90.5500, HTSUSA, as parts and accessories of other optical measuring or checking instruments and appliances, other.

Customs has reviewed the matter and determined that the correct classification of the calibration lamps is in subheading 8539.49.0040, HTSUSA, which provides for electrical filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps; arc lamps; parts thereof; ultraviolet or infrared lamps; arc lamps; other; ultraviolet lamps.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY 802032, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 966938, as set forth in "Attachment B" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: July 29, 2004

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY 802823
October 31, 1994
CLA–2–90:S:N:N3:114 802823
CATEGORY: Classification
TARIFF NO.: 9031.90.5500

MR. JIM MASON
BALL AEROSPACE AND COMMUNICATIONS GROUP
P.O. Box 1062
Boulder, Colorado 80306–1062

RE: The tariff classification of calibration lamps from Canada

DEAR MR. MASON:

In your letter dated August 31, 1994 you requested a tariff classification ruling on calibration lamps.

The calibration lamps are designed for use with the Hubble Space Telescope. The Space Telescope Image Spectrograph (STIS) is being developed for installation in the Hubble Space Telescope during its 1997 servicing mission. The STIS has the ability to calibrate itself during down time of the Hubble through a series of calibration subsystems installed into the STIS. The calibration lamps are part of the calibration subsystems. The subsystem contains all of the optics and the mechanical systems for relaying the ultraviolet (UV) radiation into the instrument for calibration. None of the optics are inside the lamp itself.

There are two types of lamps; one is a krypton lamp and the other is a deuterium lamp. These calibration lamps consist of gas-filled bulbs and electronics, mounted in an aluminum tube. An RF electronics circuit excites the gas in the bulb; this forms the gas into a plasma. The deuterium lamp also requires a heater and heater circuit. The circuit heats a pellet that absorbs the deuterium when the lamp is not operating. An optional trigger circuit and high voltage transformer will be included in the krypton lamp if it is difficult to start.

The lamps provide illumination over continuous wavelength bands in the UV range. The krypton lamp's emissions cover the wavelengths from 130nm to 160nm, while the deuterium lamp's emissions cover 160nm to 310nm. The lamps allow the Hubble to be calibrated from within during the times that the telescope is shut down, rather than using a known light source in space.

The applicable tariff provision for the calibration lamps will be 9031.90.5500, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for parts and accessories of other optical measuring or checking instruments and appliances, other. The general rate of duty will be 10 percent ad valorem. This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed

without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 966938
CLA–2 RR:CR:GC 966938 KBR
CATEGORY: Classification
TARIFF NO.: 8539.49.0040

MR. JIM MASON
BALL AEROSPACE AND COMMUNICATIONS GROUP
P.O. Box 1062
Boulder, Colorado 80306–1062

RE: Reconsideration of NY 802823; Calibration Lamps

DEAR MR. MASON:

This is in reference to New York Ruling Letter (NY) 802823, issued to you by the Customs National Commodity Specialist Division, New York, on October 31, 1994. That ruling concerned the classification of two calibration lamps [one krypton lamp and one deuterium lamp] designed for use with the Hubble Space Telescope, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed NY 802823 and determined that the classification provided for the calibration lamps is incorrect.

FACTS:

NY 802823 concerned two calibration lamps, one krypton lamp and one deuterium lamp, designed for use with the Hubble Space Telescope. The Space Telescope Image Spectrograph (STIS) was being developed for installation in the Hubble Space Telescope during a 1997 servicing mission. The STIS has the ability to calibrate itself during down time of the Hubble Space Telescope through a series of calibration subsystems installed into the STIS. The calibration lamps are part of the calibration subsystems. The subsystems contain all of the optics and the mechanical systems for relaying the ultraviolet radiation into the instrument for calibration. None of the optics are in the lamps themselves.

The krypton and deuterium lamps allow the Hubble Space Telescope to be calibrated from within during the times when the telescope is shut down, rather than using a known light source in space. The lamps provide illumination over continuous wavelength bands in the ultraviolet range. The krypton lamp's emissions cover the wavelengths from 130 nm to 160 nm. The deuterium lamp's emissions cover the wavelengths from 160nm to 310nm.

Both the krypton lamp and the deuterium lamp are gas–filled bulbs and electronics, mounted in an aluminum tube. An RF electronics circuit excites the gas in the bulb forming the gas into a plasma. The deuterium lamp also requires a heater and heater circuit which heats a pellet that absorbs the deuterium when the lamp is not operating. An optional trigger circuit and high voltage transformer were to be included in the krypton lamp if it was difficult to start. Each lamp is a self contained unit, totally enclosed within its own glass envelope. Therefore, each calibration lamp retains its own identity even though inserted into the STIS.

In NY 802823, it was determined that the krypton lamp and deuterium lamp were classified in subheading 9031.90.5500, HTSUSA, which provides for parts and accessories of other optical measuring or checking instruments and appliances, other.

We have reviewed NY 802823 and determined that the classification of the krypton and deuterium calibration lamps is incorrect. This ruling sets forth the correct classification.

ISSUE:

What is the classification of the subject krypton and deuterium calibration lamps under the HTSUSA?

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). Under GRI 1, merchandise is classifiable according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In interpreting the headings and subheadings, Customs and Border Protection ("CBP") looks to the Harmonized Commodity Description and Coding System Explanatory Notes (ENs). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUSA. It is CBP practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUSA provisions under consideration are as follows:

8539	Electrical filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps; arc lamps; parts thereof:
	Ultraviolet or infrared lamps; arc lamps:
8539.49.00	Other
8539.49.0040	Ultraviolet lamps
* * * * *	
9031	Measuring or checking instruments, appliances and machines, not specified or included elswhere in this chapter; profile projectors; parts and accessories thereof::

9031.90 Parts and accessories:

Of other optical instruments and appliances, other than test benches:

9031.90.5800 Other

One of the headings under consideration is 8539, HTSUSA, which includes ultraviolet lamps. The ENs for heading 8539 describe "ultra-violet lamps" as:

> used for medical, laboratory, germicidal or other purposes. They usually consist of a fused quartz tube containing mercury; they are sometimes enclosed in an outer envelope of glass. Some are known as black light lamps (e.g., those used for theatrical purposes).

The instant calibration lamps produce ultraviolet light for use in calibrating the STIS on the Hubble Space Telescope which clearly falls within this EN description of an ultraviolet lamp of heading 8539, HTSUSA.

In NY 802823, CBP found that the calibration lamp was classified in heading 9031, HTSUSA, as a part and accessory of other optical measuring or checking instruments and appliances. However, in considering heading 9031, HTSUSA, we must first consider the relevant Section and Chapter Notes. Note 2(a) to chapter 90 states:

> Parts and accessories which are goods included in any of the headings of this chapter or of chapter 84, 85 or 91 (other than heading 8485,8548 or 9033) are in all cases to be classified in their respective headings

Note 2(b) to chapter 90 states:

> Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013, or 9031) are to be classified with the machines, instruments or apparatus of that kind

See also similar language in the Section Notes for headings 8539 at Section XVI Note 2(a) and (b). The ENs for Section XVI at General, (II) Parts (Section Note 2), states that "parts which in themselves constitute an article covered by a heading of this Section . . . ; these are in all cases classified in their own appropriate heading even if specially designed to work as part of a specific machine." The EN then specifically lists at (14) Lamps of heading 85.39. The ENs for chapter 90 at General, (III) Parts and Accessories (Chapter Note 2), (1), gives similar guidance, stating that "[f]or example, . . . lamps . . . remain in Chapter 85. . . ." Applying Note 2(a), to the instant calibration lamps will classify the articles in their own right, not as a part or accessory.

The EN language for Section XVI Note 2 was cited by the court in *Nidec Corp. v. United States*, 861 F. Supp. 136 (CIT 1994), *aff'd.* 68 F.3d 1333 (Fed. Cir. 1995). The court, applying the EN for Section XVI Note 2, determined that if a good can be classified in its own heading in accordance with Legal Note 2(a), then classification as a part under Legal Note 2(b) is inappropriate. *See also* HQ 962946 (May 1, 2000), HQ 952026 (July 23, 1992), HQ 963219 (February 5, 2001). Therefore, applying the court's reasoning to the instant calibration lamps, we apply Note 2(a) to chapter 90, which directs

classification of the articles in their own appropriate heading, heading 8539, HTSUSA, and not as a part or accessory.

In this case, as discussed above, the calibration lamps are classified pursuant to chapter 90, Note 2(a) in heading 8539, HTSUSA, as lamps. Therefore, classification as a part of measuring or checking instruments, appliances and machines, not specified or included elsewhere in chapter 90, under chapter 90, Note 2(b) is precluded.

HOLDING:

By application of Note 2(a) to chapter 90, the calibration lamps are classified in heading 8539, HTSUSA. The krypton and deuterium ultraviolet lamps intended for use in the STIS for the Hubble Space Telescope are specifically provided for in subheading 8539.49.0040, HTSUSA, as electrical filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps; arc lamps; parts thereof; ultraviolet or infrared lamps; arc lamps; other; ultraviolet lamps. The 2004 column one, general rate of duty rate is 2.4% *ad valorum*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the World Wide Web at *www.usitc.gov.*

EFFECT ON OTHER RULINGS:

NY 802823 dated October 31, 1994, is **REVOKED.**

MYLES B. HARMON,
Director,
Commercial Rulings Division.

MODIFICATION OF RULING LETTER AND TREATMENT RELATING TO CLASSIFICATION OF A SECURITY INDICATOR ASSEMBLY

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of modification of a ruling letter and treatment relating to tariff classification of a security indicator assembly.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that the Bureau of Customs and Border Protection ("CBP") is modifying a ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a security indicator assembly and revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* on June 23, 2004. No comments were received in response to this notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after October 17, 2004.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, General Classification Branch, (202) 572–8782.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with CBP laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the CBP and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. § 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on June 23, 2004, in the *Customs Bulletin* Vol. 38, No. 26, proposing to modify NY E81170, dated May 27, 1999. This ruling pertained to the tariff classification of a security indicator assembly. No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importa-

tions of the same or similar merchandise, or the importer's or CBP's previous interpretation of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of this final notice.

In NY E81170, dated May 27, 1999, CBP found that a security indicator assembly was classified in subheading 8544.30.0000, HTSUSA, as ignition wiring sets and other wiring harnesses of a type used in vehicles, aircraft or ships.

CBP has reviewed the matter and determined that the correct classification of the security indicator assembly is in subheading 8512.20.4040, HTSUSA, which provides for electrical lighting or signaling equipment, of a kind used for cycles or motor vehicles; parts thereof: other lighting or visual signaling equipment: visual signaling equipment, for vehicles.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY E81170, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 966661, as set forth in the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the *Customs Bulletin*.

Dated: July 30, 2004

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 966661
July 30, 2004
CLA–2 RR:CR:GC 966661 KBR
CATEGORY: Classification
TARIFF NO.: 8512.20.4040

MS. CHRISTIE SICKEN
CUSTOMS ANALYST
ALPS
1500 Atlantic Boulevard
Auburn Hills, MI 48326

RE: Reconsideration of NY E81170; Security Indicator

DEAR MS. SICKEN:

This is in reference to New York Ruling Letter (NY) E81170, issued to you by the Customs National Commodity Specialist Division, New York, on May 27, 1999. That ruling concerned the classification of several automobile components, including a security indicator with an electric wiring harness, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed NY E81170 and determined that the classification provided for the security indicator with wiring harness is incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), a notice was published on June 23, 2004, in Vol. 38, No. 26 of the *Customs Bulletin*, proposing to modify NY E81170. No comments were received in response to this notice.

FACTS:

In NY E81170, it was determined that the ALPS item number SANWD9011B security indicator was classifiable in subheading 8544.30.0000, HTSUSA, as ignition wiring sets and other wiring harnesses of a type used in vehicles, aircraft or ships. The security indicator consists of a wiring harness with a connector attached to one end and a plastic housing containing a small printed circuit board and an LED at the other end. The plastic housing fits over the post of the door lock and the LED is illuminated when the security system is activated. The LED is labeled "SECURITY". The wires measure approximately 10 inches in length.

We have reviewed that ruling and determined that the classification of the security indicator is incorrect. This ruling sets forth the correct classification.

ISSUE:

Is a security indicator with wiring harness properly classified under the HTSUSA as a wiring harness or as signaling equipment?

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) in accordance with the General Rules of Interpretation (GRIs). Under GRI 1, merchandise is classifiable according to the terms of the headings of the tariff schedule and any relative Section or

Chapter Notes. In the event that the goods cannot be classified on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (EN). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUSA. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUSA provisions under consideration are as follows:

8512	Electrical lighting or signaling equipment (excluding articles of heading 8539), windshield wipers, defrosters and demisters, of a kind used for cycles or motor vehicles; parts thereof:
*	* * * * *
8512.20	Other lighting or visual signaling equipment:
8512.20.40	Visual signaling equipment
8512.20.4040	For vehicles of subheading 8701.20 or heading 8702, 8703, 8704, 8705 or 8711
8544	Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electric conductors or fitted with connectors:
*	* * * * *
8544.30.0000	Ignition wiring sets and other wiring sets of a kind used in vehicles

The article at issue is a security indicator comprised of a wiring harness with a connector attached to one end and a plastic housing containing a small printed circuit board and an LED on the other end. The ENs for heading 8512, HTSUSA, exclude from this heading:

> (e) Insulated electric wire and cable, whether or not cut to length or fitted with connectors or made up in sets (e.g., ignition wiring sets) (heading 85.44).

The EN for heading 8544, HTSUSA, states that:

> Wire, cable, etc., remain classified in this heading if cut to length or fitted with connectors (e.g., plugs sockets, lugs, jacks, sleeves or terminals) at one or both ends. The heading also includes wire, etc., of the types described above made up in sets (e.g., multiple cables for connecting motor vehicle sparking plugs to the distributor).

Customs has issued several rulings dealing with the classification of wiring harnesses and headings 8512 and 8544, HTSUSA. In distinguishing between headings 8512 and 8544, HTSUSA, Customs in HQ 951511 (June 1, 1992), found that a wiring harness with a bulb is classified in heading 8512, HTSUSA. However, when imported without a bulb a wiring harness would

not be classified under heading, 8512, HTSUSA, but would be classified under heading 8544, HTSUSA, as insulated wire with connectors. *See also* HQ 953166 (January 14, 1993) (classifying a wiring harness with only a lamp socket but no bulb in heading 8544 and specifically distinguishing HQ 951511 whose article included bulbs).

In HQ 954945 (November 23, 1993), Customs looked at the *function* an automobile rear tail light assembly performed. The rear tail light assembly provided rear end illumination for night driving, turn signaling, brake lighting, hazard signaling, and illumination in reverse gear. Customs determined that, under GRI 3(b), the essential character of a combination lamp assembly which included a hazard light performed as visual signaling equipment and therefore was classified under subheading 8512.20.40, HTSUSA.

In HQ 962654 (April 5, 1999), which corrected a clerical error in NY D86618, Customs found that an automotive wiring and LED warning light assembly was classified in subheading 8512.20.4040, HTSUSA. *See also* HQ 963831 (January 11, 2001) (finding that due to its "principal use," an LED warning system is classified in heading 8512, HTSUSA). In NY H87857 (February 1, 2002), Customs found that a seatbelt sensor warning light assembly was classified in subheading 8512.20.4040, HTSUSA.

Like the merchandise classified in HQ 962654, the instant article is not simply a wiring harness with a connector on one or both ends. One end of the instant article has a security indicator LED assembly. The purpose of the indicator is to warn that the security system is active. This is a visual signaling function. Because the function of the instant security indicator is to provide a visual warning to the automobile operator and it is imported with the LED included, the security indicator is classified under subheading 8512.20.4040, HTSUSA, as visual signaling equipment for vehicles.

HOLDING:

The security indicator is classified under subheading 8512.20.4040, HTSUSA, as electrical lighting or signaling equipment, of a kind used for cycles or motor vehicles; parts thereof: other lighting or visual signaling equipment: visual signaling equipment, for vehicles. The 2004 column one, general rate of duty rate is 2.5% *ad valorum*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the World Wide Web at *www.usitc.gov.*

EFFECT ON OTHER RULINGS:

NY E81170 dated May 27, 1999, is **modified**. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective sixty (60) days after publication in the *Customs Bulletin.*

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION OF RULING LETTERS RELATING TO APPRAISEMENT OF ARTICLES RETURNED AFTER HAVING BEEN REPAIRED OR RECYCLED OVERSEAS

AGENCY: U. S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed modification of ruling letters and treatment relating to the appraisement of articles sent abroad for repair or recycling and subsequently returned to the United States.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection ("CBP") intends to modify two ruling letters and any treatment previously accorded by CBP to substantially identical transactions, concerning the appraisement of articles sent abroad for repair or recycling and subsequently returned. CBP invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before September 17, 2004.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. 20220, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Gina Grier, International Trade Compliance Division (202) 572–8719.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are **informed compliance** and **shared responsibility.** These concepts are based on the premise that in order to maximize voluntary compliance with CBP laws and regulations, the trade community needs to be clearly and

completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's rights and responsibilities under the CBP and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable CBP to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify two rulings relating to the valuation of articles that have been returned to the United States after having been sent overseas for repair or recycling. Although in this notice Customs is specifically referring to two rulings, Headquarters Ruling Letter ("HQ") 544241, dated January 12, 1989 (Attachment A), and HQ 543859, dated March 13, 1987 (Attachment B), this notice covers any rulings on this issue that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the issues subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to modify any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP's personnel applying a ruling of a third party to importations involving the same or similar issues, or the importer's or CBP's previous interpretation of the valuation laws. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

HQ 544241 involved the appraisement of defective watches sent overseas for repair and subsequent return. CBP determined that the watches would be appraised under computed value, and that the defective watches that were sent abroad constituted assists for valuation purposes. CBP held that the value attributed to the defective watches was equal to the costs incurred for transporting them to the

plant for repair. In HQ 543859, used lacquer thinner was sent to Canada for recycling before being returned to the United States. In that case, transaction value was determined to be the correct appraisement method, comprised of the amount actually paid or payable to the Canadian recycler plus the value, as an assist, of the used solvent. Upon reassessment of these two rulings, it is CBP's position that the characterization of the defective watches and of the used lacquer thinner as assists was in error. Furthermore, in some instances the use of transaction value as the appraisement method in HQ 543859 appears to be incorrect.

Pursuant to 19 U.S.C. 1625(c)(1)), Customs intends to modify HQ 544241 and to revoke HQ 543859 and any other ruling not specifically identified to reflect the proper appraisement of the merchandise pursuant to the analysis in HQ 548557 and HQ 548569, which are set forth as "Attachment C" and "Attachment D" to this document, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to modify any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

DATED: July 30, 2004

Steven Jarreau for LARRY L. BURTON,
Director,
International Trade Compliance Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
12 January 1989
HQ 544241
CLA–2 CO:R:C:V 544241 EK
CATEGORY: Valuation

RICHARD G. GEARY
CORPORATE MANAGER
CUSTOMS PLANNING & COMPLIANCE
TIMEX CORPORATION
Waterbury, Connecticut 06720

RE: Request for Ruling Regarding Appraisement of Watches

DEAR MR. GEARY:

This is in response to your letter of August 30, 1988, requesting a ruling as to the proper appraisement, pursuant to section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA; 19 U.S.C.

1401a(b)), of watches sent abroad for repair and returned without the benefit of Item 806.20, Tariff Schedules of the United States. You also inquire as to the proper classification of the watches. We have sent a copy of your letter to our General Classification Branch for an appropriate response.

FACTS:

You indicate that your company (importer) purchases and imports watches assembled in the Philippines by a related company. The watches are then *sold* in the United States with the benefit of a warranty extended to your customers.

Defective watches, both in and out of warranty, are returned to the importer for repair. You state that the defective watches are then *exported to* importer's related party in the Philippines for repair and return. The watches: are repaired and *then* sold back to the importer at prices which cover the cost of repairs plus a mark-up.

You state that at the present time, the watches are registered and exported under Customs supervision and are entered into the United States under Item 806.20, TSUS. However, in the future, you will continue to have the watches repaired in the Philippines but without export registration and Customs supervision. You are inquiring as to the proper method of appraisement of the watches.

ISSUE:

What is the proper method of appraising watches which are repaired aboard by a related party and subsequently returned to the United States?

LAW AND ANALYSIS:

You are correct in stating that the watches will be appraised pursuant to section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA; 19 U.S.C. 1401a).

Transaction value, the preferred method of appraisement, is defined as the "price actually paid or payable" when the merchandise is sold for exportation to the United States. See, section 402(b) of the TAA. With respect to the situation you describe, section 152.103(a)(3) of the Customs Regulations [19 CFR 152.103(a)(3)] states the following:

The price actually paid or payable may represent an amount for the assembly of imported merchandise in which the seller has no interest other than as the assembler. The price actually paid or payable in that case will be calculated by the addition of the value of the components and required adjustments to form the basis for the transaction value.

From the information you have provided, we cannot conclusively state that transaction value is inapplicable. The initial decision as to whether transaction value is appropriate in a related party situation is made by the appraising officer. If the appraising officer is satisfied that the parties, albeit related, buy and sell from one another as if they are unrelated, then transaction value may be proper. Furthermore, if the price closely approximates one of the "test values" which are enumerated in section 402(b)(2)(B) of the TAS, then transaction value is appropriate in appraising the merchandise.

Assuming that transaction value is found to be improper in this case, then it is necessary to proceed sequentially through the remaining bases of appraisement provided for under the valuation statute.

The next basis of appraisement, transaction value of identical or similar merchandise pursuant to section 402(c), appears to be inapplicable. Based upon the facts as presented, it appears as if the repaired watches are neither identical nor similar to the watches which enter the United States brand new.

With respect to deductive and computed value, sections 402(d) and 402(e), respectively, the importer has a choice as to which method is to be utilized. However, here, as you indicate, deductive value is not available since the watches are not "sold" in the United States.

Computed value pursuant to section 402(e) of the TAS appears to be the appropriate method of appraisement in this case. The computed value of imported merchandise is the sum of the cost or value of the materials and the fabrication and other processing, profit and general expenses of the producer, any assist, and packing costs.

Under the circumstances presented, the defective watches acquired by the importer and sent to the related party for repair will be considered assists pursuant to section 402(h) of the TAA. The defective watches are given to the importer by the ultimate consumer in the United States due to a warranty provision extended by the manufacturer. The importer is merely acting as an agent of the ultimate consumer in honoring the warranty provision on behalf of the manufacturer. The value attributed to the defective watches in this case is equal to the costs incurred for transporting the watches to the related party's plant.

For purposes of this response, we are assuming that to the extent applicable, the appraised value of the defective watches will include all statutory elements of computed value. Further, absent more specific information pertaining to the profit and general expenses of the repaired watches, we are unable to conclude that the repaired watches are not of the same class as new watches.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
March 13, 1987
CLA–2 CO:R:CV:V
543859 cw

MR. T.W. KENNARD
PRESIDENT
B.A. MCKENZIE & CO., INC.
Post Office Box 1435
813 Pacific Avenue
Tacoma, Washington 98401

DEAR MR. KENNARD:

In your letter of October 20, 1986, you inquire concerning the tariff treatment which can be accorded to certain lacquer thinner which has been recycled in Canada to remove impurities.

You state that waste used lacquer thinner is acquired from various auto body paint shops where it has been utilized to clean paint from articles. The approximate composition of the solvent is toluene 50%, methanol 40%, and methyl ethyl ketone 10%. The recycler charges a fee for the removal of the impurities and there is no market in Canada for the purified solvent.

We are of the opinion that the waste lacquer thinner has been advanced in value and improved in condition by the recycling abroad and, therefore, classification of the returned product under item 800.00, Tariff Schedules of the United States (TSUS), is precluded. The processing in Canada is too extensive to be considered an alteration under the provisions of item 806.20, TSUS. Accordingly, the returned lacquer thinner would probably be dutiable upon the total quantity and full value of the chemica1 mixture under item 432.28, TSUS, at the rate of 18. 2 percent ad valorem.

On the basis of the information you have submitted, it appears that the returned solvent would be appraised on the basis of transaction value, section 402(b), Tariff Act of 1930, as amended by the Trade Agreements Act of 1979. Transaction value would be represented by the amount actually paid or payable to the Canadian recycler plus the value, as an assist, of the used solvent which is shipped to the recycler. If the used solvent is acquired by your company free of charge, the value of the assist would consist of the freight and related costs involved in transportlng the used solvent to the recycling facility in Canada .

JOHN T. ROTH,
Acting Director,
Classification and Value Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 548557
VAL–RR:IT:V 548557 GG
CATEGORY: Valuation

MR. RICHARD G. GEARY
CORPORATE MANAGER
CUSTOMS PLANNING & COMPLIANCE
TIMEX CORPORATION
Waterbury, Connecticut 06720

RE: Modification of HQ 544241; Appraisement of Watches; Assists

DEAR MR. GEARY:

This is in reference to Headquarters Ruling Letter (HQ) 544241, dated January 12, 1989, regarding the appraisement of watches that were sent overseas to be repaired and then returned. We have reviewed the ruling and find one of its conclusions to be incorrect. This ruling sets forth the correction.

FACTS:

The facts as originally set forth are:

> You indicate that your company (importer) purchases and imports watches assembled in the Philippines by a related company. The watches are then sold in the United States with the benefit of a warranty extended to your customers.
>
> Defective watches, both in and out of warranty, are returned to the importer for repair. You state that the defective watches are then exported to importer's related party in the Philippines for repair and return. The watches are repaired and then sold back to the importer at prices which cover the cost of repairs plus a mark-up.
>
> You state that at the present time, the watches are registered and exported under Customs supervision and are entered into the United States under Item 806.20, TSUS. However, in the future, you will continue to have the watches repaired in the Philippines but without export registration and CBP supervision. You are inquiring as to the proper method of appraisement of the watches.

ISSUE:

What is the proper method of appraising watches which are then repaired abroad by a related party and subsequently returned to the United States?

LAW AND ANALYSIS:

You are correct in stating that the watches will be appraised pursuant to section 402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (TAA; 19 U.S.C. 1401a). Transaction value, the preferred method of appraisement, is defined as the "price actually paid or payable" when the merchandise is sold for exportation to the United States. See section 402(b) of the TAA. With respect to the situation you describe, section 152.103(a)(3) of the Customs Regulations (19 CFR § 152.103(a)(3)) states the following:

> The price actually paid or payable may represent an amount for the assembly of imported merchandise in which the seller has no interest other than as the assembler. The price actually paid or payable in that case will be calculated by the addition of the components and required adjustments to form the basis for the transaction value.

From the information you have provided, we cannot conclusively state that transaction value is inapplicable. The initial decision as to whether transaction value is appropriate in a related party situation is made by the appraising officer.

If the appraising officer is satisfied that the parties, albeit related, buy and sell from one another as if they are unrelated, then transaction value may be proper. Furthermore, if the price closely approximates one of the "test values" which are enumerated in section 402(b)(2)(B) of the TAA, then transaction value is appropriate in appraising the merchandise.

Assuming that transaction value is found to be improper in this case, then it is necessary to proceed sequentially through the remaining bases of appraisement provided for under the valuation statute.

The next basis of appraisement, transaction value of identical or similar merchandise pursuant to section 402(c), appears to be inapplicable. U.S. Customs and Border Protection is in possession of no documentation addressing the appraisement of identical or similar used watches.

With respect to deductive and computed value, sections 402(d) and 402(e), respectively, the importer has a choice as to which method is to be utilized. However, here, as you indicate, deductive value is not available since the watches are not "sold" in the United States.

Computed value pursuant to section 402(e) of the TAA appears to be the appropriate method of appraisement in this case. The computed value of imported merchandise is the sum of the cost or value of the materials and the fabrication and other processing, profit and general expenses of the producer, any assist, and packing costs.

In HQ 544241, which this ruling is modifying, CBP determined that the defective watches that were sent to be repaired are assists. Upon reconsideration, we now deem that determination to be incorrect. Section 402(h)(1)(A) of the TAA defines assists in the following manner:

> The term "assist" means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or sale for export to the United States of the merchandise:
>
> i. Materials, components, parts, and similar items incorporated in the imported merchandise.
> ii. Tools, dies, molds, and similar items used in the production of the imported merchandise.
> iii. Merchandise consumed in the production of the imported merchandise.
> iv. Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

The defective watches fall within none of the above categories. They quite clearly are neither tools, dies or molds used in the production of the imported merchandise, nor are they engineering, development, artwork, design work etc. necessary for the production of the imported merchandise. The defective watches also are not "materials, components, parts, and similar items incorporated in the imported merchandise," because they *are* the imported merchandise, albeit in an unrepaired state. Finally, the defective watches are merely repaired and thus are not "consumed in the production of the imported merchandise." For these reasons, we hereby rescind the decision in HQ 544241 that the defective watches are assists. In so doing, we concurrently overturn the determination that the value attributed to the defective watches in their capacity as assists is equal to the costs incurred for transporting them to the related party's plant.

For purposes of this response, we are assuming that to the extent applicable, the appraised value of the defective watches will include all statutory elements of computed value. Further, absent more specific information pertaining to the profit and general expenses of the repaired watches, we are unable to conclude that the repaired watches are not of the same class as new watches.

HOLDING:

Absent a finding by the appraising officer that the repaired watches may be appraised under transaction value, the proper appraisement method is computed value. The defective watches that are exported for repair and subsequently returned are not assists.

VIRGINIA L. BROWN,
Chief,
Value Branch.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
VAL RR:IT:V
548569 GG

MR. T.W. KENNARD
PRESIDENT
B.A. MCKENZIE & CO., INC.
Post Office Box 1435
813 Pacific Avenue
Tacoma, Washington 98401

DEAR MR. KENNARD:

This is in reference to Headquarters Ruling Letter (HQ) 543859, dated March 13, 1987, regarding the appraisement of used lacquer thinner which has been returned to the United States after being recycled in Canada. We have reviewed the ruling and find several of its conclusions regarding appraisement to be incorrect. This ruling hereby sets forth the necessary corrections. We have left the content on classification unchanged.

In your original letter of October 20, 1986, you state that used lacquer thinner is acquired from various auto body paint shops where it has been utilized to clean paint from articles. The approximate composition of the solvent is toluene 50%, methanol 40%, and methyl ethyl ketone 10%. The recycler charges a fee for the removal of the impurities and there is no market in Canada for the purified solvent.

We are of the opinion that the waste lacquer thinner has been advanced in value and improved in condition by the recycling abroad and, therefore, classification of the returned product under item 800.00, Tariff Schedules of the United States (TSUS), is precluded. The processing in Canada is too extensive to be considered an alteration under the provisions of item 806.20, TSUS. Accordingly, the returned lacquer thinner would probably be dutiable upon the total quantity and full value of the chemical mixture under item 432.28, TSUS, at the rate of 18.2 percent ad valorem.

In HQ 543859, U.S. Customs and Border Protection ("CBP") determined that the returned solvent would be appraised on the basis of transaction value, pursuant to section 402(b) of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979. Specifically, the ruling provided that transaction value would be represented by the amount actually paid or payable to the Canadian recycler plus the value, as an assist, of the used solvent that is shipped to the recycler. It further provided that if the solvent is acquired free of charge, then the value of the assist would consist of the freight and related costs involved in transporting the used solvent to the recycling facility in Canada.

Upon reconsideration, CBP now finds that the decision as to the appraisement method, as well as to the characterization of the used solvent as an assist, was not necessarily correct. In making this determination, CBP focused on several specific aspects of the transaction. Namely, in the ruling request it is emphasized that the company that acquired the used solvent and shipped it to Canada for recycling will own the solvent, and the recycler will simply work on a fee basis. It is also stated that the recycled solvent will either be returned to the owner in the United States, or shipped directly to a U.S. located consumer. To the best of the owner's knowledge no similar product is imported into the United States.

In HQ 543859, CBP held that the purified lacquer thinner would be appraised under transaction value. Transaction value, the preferred method of appraisement, is defined as the price actually paid or payable when the merchandise is sold for exportation to the United States. Section 402(b), TAA. On the basis of the information provided, it appears as though there may be a valid transaction value in those instances when a sale is made to a U.S. customer while the lacquer thinner is still located in Canada. This is because there would have been a "sale for exportation" to the United States. However, no transaction value exists when the recycled lacquer thinner is simply returned to the owner without being subject to a sale. In such cases, an alternative appraisement method must be used.

When imported merchandise cannot be appraised on the basis of transaction value, it is to be appraised in accordance with the remaining methods of valuation, applied in sequential order. The alternative bases of appraisement, in order of preference, are: the transaction value of identical merchandise; the transaction value of similar merchandise; deductive value; and computed value. If the value of imported merchandise cannot be determined

under these methods, it is to be determined in accordance with section 402(f) of the TAA.

The ruling request indicates an absence of sales of similar merchandise. By implication, this means that there are probably no sales of identical merchandise, either. Consequently, the transaction values of identical and similar merchandise are not available as appraisement methods. It is possible that there may be a deductive value, if the recycled lacquer thinner is sold domestically within 90 days of importation. Although the ruling request suggests that the computed value of appraisement would be applicable, we note that the owner and the recycler disclaim any relationship. The absence of a relationship usually precludes the use of computed value due to the difficulty in obtaining the producer information necessary to validate a computed value. In some cases the recycled lacquer thinner may have to be appraised under the "fallback" valuation method of section 402(f) of the TAA, in which case the value could be based on the amount charged by the Canadian company to recycle the used lacquer thinner.

Finally, we wish to reassess the characterization in HQ 543859 of the used lacquer thinner as an assist. Section 402(h)(1)(A) of the TAA defines assists in the following manner:

> The term "assist" means any of the following if supplied directly or indirectly, and free of charge or at reduced cost, by the buyer of imported merchandise for use in connection with the production or sale for export to the United States of the merchandise:

i. Materials, components, parts, and similar items incorporated in the imported merchandise.
ii. Tools, dies, molds, and similar items used in the production of the imported merchandise.
iii. Merchandise consumed in the production of the imported merchandise.
iv. Engineering, development, artwork, design work, and plans and sketches that are undertaken elsewhere than in the United States and are necessary for the production of the imported merchandise.

The used lacquer thinner falls within none of the above categories. It quite clearly is neither a tool, die or mold that is used in the production of the imported merchandise, nor is it engineering, development, artwork, design work etc. that is necessary for the production of the imported merchandise. The used lacquer thinner also is not a material, component, part or similar item that is incorporated in the imported merchandise, because it is the imported merchandise, albeit in an unpurified state. Finally, the used lacquer thinner is merely recycled in Canada and thus is not "consumed in the production of the imported merchandise." For these reasons, we hereby rescind the decision in HQ 543859 that the used lacquer thinner is an assist.

VIRGINIA L. BROWN,
Chief,
Value Branch.

United States Court of International Trade

One Federal Plaza
New York, NY 10278

Chief Judge

Jane A. Restani

Judges

Gregory W. Carman
Thomas J. Aquilino, Jr.
Donald C. Pogue
Evan J. Wallach
Judith M. Barzilay
Delissa A. Ridgway
Richard K. Eaton
Timothy C. Stanceu

Senior Judges

Nicholas Tsoucalas
R. Kenton Musgrave
Richard W. Goldberg

Clerk

Leo M. Gordon

Slip Op. 04–93

NORTH DAKOTA WHEAT COMMISSION, U.S. DURUM GROWERS ASSOCIATION, and DURUM GROWERS TRADE ACTION COMMITTEE, Plaintiffs, v. UNITED STATES, Defendant, and CANADIAN WHEAT BOARD, Defendant-Intervenor.

Court No. 03–00838

[Defendant's Motion to Dismiss is granted.]

Decided: July 29, 2004

Robins, Kaplan, Miller & Ciresi, LLP (*Charles A. Hunnicutt*), for Plaintiff.
James M. Lyons, Acting General Counsel, Office of General Counsel, United States International Trade Commission, (*Michael Diehl*), Attorney-Advisor, for Defendant.
Steptoe & Johnson LLP, Richard O. Cunningham, Edward J, Krauland, (*Matthew S. Yeo*), *Tina Potuto Kimble*, for Defendant-Intervenor.

OPINION

BARZILAY, JUDGE: In this case, the court is called upon to decide whether plaintiffs, the North Dakota Wheat Commission, U.S. Durum Growers Association, and Durum Growers Trade Action Committee ("plaintiffs") have failed to establish jurisdiction in this court as defendant, the United States International Trade Commission ("Commission"), argues in its motion to dismiss. Specifically, the government argues that the North Dakota Wheat Commission commenced the present action[1] during a time expressly prohibited by section 516a(a)(5) of the Tariff Act of 1930 (19 U.S.C. § 1516a(a)(5)).

[1] The petition was originally filed by the North Dakota Wheat Commission and the U.S. Durum Growers Association. The Durum Growers Trade Action Committee was added as a petitioner by amendment.

I. Background

On September 13, 2002, the North Dakota Wheat Commission and the U.S. Durum Growers Association filed a petition with the Department of Commerce ("Commerce") and the Commission alleging that a domestic industry was being materially injured and threatened with material injury by reason of imports of durum wheat from Canada that were being subsidized and sold at less than fair value. In October, 2002, Commerce initiated both countervailing duty and antidumping investigations of certain hard red spring and durum wheat from Canada. Commerce initiated four specific and separate investigations: one countervailing duty and antidumping investigation for each type of wheat. In November 2002, the Commission made a preliminary determination that there was a reasonable indication that an industry in the United States was materially injured by reason of subject imports of durum wheat from Canada. *Durum and Hard Red Spring Wheat from Canada*, Inv. Nos. 701–TA–430A and 430B and 731–TA–1019A and 1019B (Preliminary), USITC Pub. 3563 (Dec. 2002). Commerce subsequently made a final affirmative determination in all four investigations. 68 Fed. Reg. 52,747 (Sept. 5, 2003) (final CVD determination), 68 Fed. Reg. 52741 (Sept. 5, 2003) (final less than fair value determination). On October 23, 2003, the Commission issued its final determination, finding that the domestic industry was being materially injured by subsidized imports from Canada of hard red spring wheat, but was not being materially injured or threatened with material injury by subsidized imports of durum wheat from Canada. *Durum and Hard Red Spring Wheat from Canada*, 68 Fed. Reg. 6,070 (Oct. 23, 2003); *Durum and Hard Red Spring Wheat from Canada*, Inv. Nos. 701–TA–430A and 430B and 731–TA–1019A and 1019B (Final), USITC Pub. 3639 (Oct. 2003). Twenty-nine days later, on November 21, 2003, plaintiffs filed a summons with the court, challenging the Commission's determination and commencing the instant litigation.

Pursuant to USCIT R. 12(b)(1), defendant moves to dismiss for lack of subject matter jurisdiction, arguing that plaintiffs commenced the present action during a time expressly prohibited by 19 U.S.C. § 1516a(a)(5)[2]. Specifically, defendant argues that section

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[2] Section 1516a(a)(5) states

(a) Review of determination . . .

(5) Time limits in cases involving merchandise from free trade area countries.

Notwithstanding any other provision of this subsection, in the case of a determination to which the provisions of subsection (g) apply, an action under this subsection shall not begin to run, until the day specified in whichever of the following subparagraphs applies:

(A) For a determination described in paragraph (1)(B) or clause (i), (ii) [negative final determinations by the Commission], or (iii) of paragraph (2)(B), the 31st day after the date on which notice of the determination is published in the Federal Register.

1516a(a)(5) creates a 30 day "time window" within which a party must file a summons seeking judicial review of a Commission determination involving imports from a free trade area country. Defendant further contends that this "window" opens on the 31st day after publication of the Commission's order in the Federal Register and closes on the 60th day after publication. Thus, commencement of judicial review is prohibited up to the 31st day. Because the plaintiffs commenced this action on November 21, 2003, defendant argues, it was commenced before the time window for doing so began and therefore within the prohibited period.

Plaintiffs respond by arguing that the court should be guided in its interpretation of section 1516a(a)(5) by this Court's recent decision in *Bhullar v. United States*, 27 CIT ___, 259 F. Supp. 2d 1332 (2003), *aff'd* 2004 U.S. App. LEXIS 3995 (March 2, 2004) (UNPUBLISHED)[3]. Plaintiffs argue that according to this Court's decision in *Bhullar*, a summons must be filed within 31 days after notice is published in the Federal Register. Plaintiffs further argue that the Commission, in *Bhullar*, argued that a plaintiff was required to commence an action no later than 31 days after notice of the antidumping or countervailing duty determination is published in the Federal Register.[4] Plaintiffs contend that this Court granted the Commission "deference" when it ruled that plaintiffs are required to timely commence an action under section 1516a(a)(5) within 31 days after publication of the notice in the Federal Register, and that they followed the Commission's "clearly stated interpretation of the statute" by filing within that period.

Plaintiffs argue in the alternative that according to the language of the statute, because neither the United States nor Canada had standing to request binational panel review of the Commission's negative determination, 19 U.S.C. § 1516a(g)[5] does not apply and therefore, section 1516a(a)(5)(A) is inapplicable. Instead, plaintiffs

---

[3] Plaintiffs, throughout their briefs in this matter, repeatedly fail to indicate that the Federal Circuit's opinion affirming *Bhullar* was issued as unpublished, and thus may not be cited as precedent. To the contrary, plaintiffs consistently cite to this opinion as controlling precedent in this case.

[4] Plaintiffs submit to the court, attached to their brief in opposition to defendant's motion to dismiss, a copy of the briefs in the *Bhullar* case. What the Commission argued in *Bhullar* is irrelevant to this case, and, in any event, the government is free to change its opinion regarding the interpretation of laws and to mend in subsequent proceedings any mistakes previously made.

[5] 19 U.S.C. § 1516a(g) states

(g) Review of countervailing duty and antidumping duty determinations involving free trade area country merchandise.

(1) Definition of determination. For purposes of this subsection, the term "determination" means a determination described in—

(A) paragraph (1)(B) of subsection (a), or

argue, section 1516a(a)(2)[6], which requires commencement of an action within 30 days after publication in the Federal Register, is controlling.

Finally, plaintiffs argue that should the court find that section 1516a(a)(5)(A) applies and prohibits commencement of an action during the first 30 days after publication in the Federal Register, the court should apply the principle of equitable tolling in this instance.

II. Analysis

A. Statute

Section 1516a(a) of Title 19 provides for judicial review of Commission determinations in countervailing duty and antidumping duty proceedings. 19 U.S.C. § 1516a(a). For cases involving merchandise from free trade area countries, as in this case, subsection (5) prescribes a time limit for commencing an action in the Court of International Trade.

> (5) Time limits in cases involving merchandise from free trade area countries. Notwithstanding any other provision of this subsection, in the case of a determination to which the provisions of subsection (g) apply, an action under this subsection may not be commenced, and the time limits for commencing an action under this subsection shall not begin to run, until the day specified in whichever of the following subparagraphs applies: . . .
>
> > (A) For a determination described in paragraph (1)(B) or clause (i), (ii) [negative final determinations by the Commission] or (iii) of paragraph (2)(B), the 31st day after the date on which notice of the determination is published in the Federal Register.

19 U.S.C. § 1516a(a)(5)(A). As plaintiffs point out, section 1516a(a) is predicated on the applicability of subsection (g). Subsection (g) applies to the review of countervailing duty and antidumping duty determinations involving free trade area merchandise, and provides for exclusive review of determinations by binational panels – if bina-

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(B) clause (i), (ii), (iii), or (vi) of paragraph (2)(B) of subsection (a), if made in connection with a proceeding regarding a class or kind of free trade area country merchandise, as determined by the administering authority.

[6] 19 U.S.C. § 1516a(a)(2) states

(2) Review of determinations on record.

(A) In general. Within thirty days after—

(i) the date of publication in the Federal Register of– . . .

(II) an antidumping or countervailing duty order based upon any determination described in clause (i) of subparagraph (B). . .

tional panel review is requested pursuant to article 1904 of the North American Free Trade Agreement ("NAFTA"), with certain exceptions not relevant here. 19 U.S.C. § 1516a(g). Subsection (g) provides for binational panel review where it has been requested, but does not, as plaintiffs assert, require that it be requested in order for subsection (a)(5) to apply. Moreover, discussing this same provision in the U.S.- Canada Free Trade Agreement – NAFTA's predecessor – the Senate report on the implementing legislation noted that

> the Agreement provides that . . . judicial review may not be commenced until the time for requesting a panel under the Agreement has expired. To preclude this possibility, section 401(a) amends section 516a(a) by adding a new paragraph (5) that prohibits the commencing of an action under section 1516a(a) *until* the 31st day after publication of the appropriate notice in the Federal Register . . . Thus, the normal 30-day period for filing a summons (and 30 days thereafter, a complaint) would *begin* to run on such 31st day.

S. REP. NO. 100–509, at 33–34 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2395, 2428 (emphasis added). Thus, the statute lays out a series of steps that may be taken with respect to review of a Commission determination. Under this scheme, commencement of an action in the Court of International Trade is precluded until the time to request a binational panel has expired. Specifically, NAFTA parties agreed to replace judicial review of certain determinations with binational panel review where binational panel review has been requested. A request for binational panel review must be made within 30 days following the date of publication of the final determination which, in the United States, refers to publication of the Commission's determination in the Federal Register. *See* NAFTA Art. 1904:4; 19 U.S.C. § 1516a(g)(2). Thus, the United States agreed to "amend its statutes or regulations to ensure that . . . domestic procedures for judicial review of a final determination may not be commenced until the time for requesting a panel . . . has expired." *See* NAFTA Art. 1904:15(c). Therefore, as section 1516a(a)(5) indicates, time limits for commencing an action in the Court of International Trade shall not begin to run until the 31st day after the date of publication in the Federal Register of notice of the final determination. NAFTA Annex 1904.15, U.S. Schedule at ¶ 9. The statutory scheme contains no requirement that the parties actually invoke binational panel review and none has been cited to the court from other sources.

Thus, because the instant action concerns review of countervailing duty and antidumping duty determinations involving free trade area merchandise, namely Canadian wheat products, subsection (g) ap-

plies.[7] Therefore, section 1516a(a)(5) applies as well. According to the facts at hand, notice of the Commission's determination was published in the Federal Register on October 23, 2003. 68 Fed. Reg. 60,707 (Oct. 23, 2003). Under the statute, commencement of an action in the Court of International Trade was prohibited and the time limits for commencing an action did not begin to run until the 31st day after the date on which notice of the determination was published in the Federal Register. In this case, that date would have been November 23, 2003, which fell on a Sunday. Thus, the earliest day plaintiffs could have filed was November 24, 2003. *See* USCIT R. 6(a). The North Dakota Wheat Commission filed its summons commencing the present action on November 21, 2003, on the 29th day after publication in the Federal Register. 28 U.S.C. § 2632(c); 19 U.S.C. § 1516a(a)(2); USCIT R. 3. Therefore, the action was commenced during the prohibited period.

B. Case law

Plaintiffs point to this Court's recent decision in *Bhullar* in support of the proposition that they had until the 31st day after publication in the Federal Register to commence this action – rather than being precluded from commencing until the 31st day after publication. 259 F. Supp. 2d at 1332. In *Bhullar*, a *pro se* plaintiff filed a complaint in the Court of International Trade over four months after publication of the Commission's final antidumping and countervailing duty determinations in the Federal Register. The government moved to dismiss for lack of jurisdiction on several grounds, including standing, untimeliness, and the fact that a binational panel review was pending. This Court held that in addition to lacking standing to bring the action, the plaintiff failed to meet the statutory timeliness requirements, and also that a NAFTA binational panel had exclusive review of the determinations in that case. On the timeliness issue, this Court held that filing a summons and complaint four months after publication in the Federal Register is prohibited by section 1516a. This holding is consistent with the court's present interpretation of section 1516a(a)(5). That the Commission took a different position in its briefs before this court in *Bhullar* – an entirely unrelated action predicated on facts entirely distinct from those presently at bar, is of no consequence. The government, like all other parties that come before this Court, is free to change its position on its interpretation of the law, and is also able to correct its past mistakes.[8] In affirming this Court's dismissal of the Plaintiff's

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[7] Because the court finds that subsection (g) is applicable to the facts at hand, plaintiff's alternative argument that section 1516a(a)(2) controls does not apply.

[8] The government, in its Reply Brief, states that in making its argument that the summons was untimely in the *Bhullar* case, the Commission's counsel inadvertently truncated the language of 19 U.S.C. § 1516a(a)(5), and the mistake was carried through papers in

case in *Bhullar*, the Court of Appeals for the Federal Circuit, in an unpublished and nonprecedential opinion, held that this Court correctly dismissed because the complaint could not lie after invocation of the binational NAFTA review process. 2004 U.S. App. LEXIS 3995 at 4. It specifically did not address the other grounds raised by the government, including timeliness. *Id.* ("Because the complaint cannot lie after invocation of the binational NAFTA review process, we need not recite other grounds, namely timeliness . . .").

Plaintiffs further argue that this Court in *Bhullar* granted the Commission deference in interpreting a statute that it administers and therefore, they (plaintiffs) should be able to rely on the Commission's erroneous prior interpretation of section 1516a(a)(5) that an action must be commenced within 31 days after publication in the Federal Register. To dismiss this action in light of *Bhullar*, plaintiffs argue, would be "extraordinarily prejudicial," as it would apply a new and different interpretation of the statute in question. To the contrary, where a statute is clear on its face, the Court does not give deference to the agency's interpretation. *See Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984). This Court, in Bhullar, held that commencement of an action over four months after publication in the Federal Register is untimely. 259 F. Supp. 2d at 1342. In doing so, however, this Court, apparently relying on government counsel's erroneous guidance, miscited the statute and stated that "[p]ursuant to § 1516a(a)(5)(A), Plaintiff is required to file its summons and complaint within 31 days after the publication in the Federal Register of the final determinations of which Plaintiff seeks review." 259 F. Supp. 2d at 1342. Plaintiffs claim to have relied on this erroneous statement to their detriment in timing their filing of the instant case. This is truly unfortunate. However, the government's previous contrary arguments before this Court notwithstanding, the statute is clear on its face, and the court must be guided by its plain meaning.

C. Equity

Plaintiffs argue that if the court does not deny the government's motion to dismiss based on the statute or case law, it should apply the doctrine of equitable tolling and allow the case to go forward. When looking to apply equitable principles in suits against the government, the court must begin with the fundamental maxim that as a sovereign the United States is immune from legal action in the courts except to the extent that it waives such immunity. *United*

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that case subsequently filed with this Court and the Federal Circuit. *Deft.'s Reply to Pl.'s Resp. in Opp. to Deft.'s Mot. to Dismiss*, 10. Pointing out that although there was no advantage gained by that mistake because even under the correct statutory language the Plaintiff's summons was still very untimely, the Commission's attorney in that case and the International Trade Commission General Counsel's Office indicate that they take responsibility for and sincerely regret the oversight. *Id.*

States v. Mitchell, 445 U.S. 535, 538 (1980). Furthermore, a waiver of sovereign immunity " 'cannot be implied but must be unequivocally expressed' " *Id.* (quoting *United States v. King*, 395 U.S. 1, 4 (1969)). The Supreme Court has held that the same rebuttable presumption of equitable tolling applicable to suits against private defendants should also apply to suits against the United States. *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 95–96 (1990). Thus, per *Irwin*, the court must inquire into the language of the statute to ascertain whether Congress intended the equitable tolling doctrine to apply. *See Irwin*, 498 U.S. at 95–96; *see also, e.g. United States v. Brockamp*, 519 U.S. 347, 353 (1997) (analyzing the language of statutory time limitations, comparing "ordinary limitations statutes," which use fairly simple language that can plausibly read as containing an implied equitable tolling exception, with "highly detailed technical ones," that cannot easily be read as containing implicit exceptions).

As discussed above, section 1516a explicitly prohibits the commencement of an action in the Court of International Trade during the 30 days following publication of the Commission's final determinations in the Federal Register. It states that

> an action under this subsection may not be commenced, and the time limits for commencing an action under this subsection shall not begin to run, until . . . the 31st day after the date on which notice of the determination is published in the Federal Register.

19 U.S.C. § 1516a(a)(5)(A). Moreover, Congress purposefully amended relevant statutes and regulations to ensure that domestic procedures for judicial review of a final determination may not be commenced until the time for requesting a panel has expired. *See* NAFTA Art. 1904(15)(c), (i). As also discussed above, the 30 day period corresponds directly to time limits under NAFTA for binational panel review that this court has no ability to alter. Thus, to read an equitable tolling provision into the statute would potentially imply an exception for tolling in virtually all time limitations throughout the statute, as well as in the NAFTA regulations – a kind of tolling for which the court has found no precedent. *Cf. Brockamp*, 519 U.S. at 353 (holding that a statute's technical language, the iteration of the limitations in both procedural and substantive forms, and the explicit listing of exceptions, taken together, indicate that Congress did not intend courts to read other unmentioned, open-ended, "equitable" exceptions into the statute).

Furthermore, *Irwin* makes clear that equitable tolling is extended "only sparingly," and where "the complainant has been induced or tricked by his adversary's misconduct . . ." 498 U.S. at 96; *see also Frazer v. United States*, 288 F.3d 1347, 1353–54 (2002) ("equitable tolling is available only when the lateness is attributable, at least in

part, to misleading governmental action"). Plaintiffs characterize the Commission's arguments in *Bhullar*, that a summons and complaint must be filed within 31 days after publication in the Federal Register, as the agency's interpretation of section 1516a. Although they argue that the Commission failed to timely notify the Court of its mistake in interpreting the statute, plaintiffs do not indicate that they had been induced to file their summons on the 29th day after publication by any trickery or government misconduct. Furthermore, there is no support for the proposition that the government's misreading of the statute and argument in one case constitute trickery or misconduct to plaintiffs – parties in a case entirely unrelated to the lawsuit in question.

Finally, plaintiffs fail to establish that they acted diligently. *Cf. Former Employees of Sonoco Products Co. v. Elaine Chao*, 27 CIT ___ , 273 F. Supp. 2d 1336, 1341 (2003) (requiring a party seeking to apply the doctrine of equitable tolling to show that it exercised due diligence in preserving its legal rights), *aff'd*, 2004 U.S. App. LEXIS 12071. Courts have found due diligence where a party made reasonable and sustained attempts to resolve questions or ambiguities and reasonably attempted to comply with the statutory time limits. *See Former Employees of Quality Fabricating, Inc. v. United States Sec. of Labor*, 27 CIT ___ , 259 F. Supp. 2d 1282, 1286 (2003). There is no indication that plaintiffs attempted to resolve any apparent discrepancy between the clearly stated statutory time limits and the contradictory language in *Bhullar*. Neither is there any indication of any communication between plaintiffs and the Commission regarding the statutory language. Furthermore, plaintiffs, being represented by able counsel, are aware that where a statute is unambiguous on its face, it is controlling. Thus, the court is unable to apply the principle of equitable tolling in this instance and to establish a new interpretation of section 1516a(a)(5)(A) for future actions, as plaintiffs request.

III. Conclusion

For the foregoing reasons, the International Trade Commission's motion to dismiss is hereby GRANTED.

Slip Op. 04–95

ORLANDO FOOD CORP., Plaintiff, v. UNITED STATES, Defendant.

Before: WALLACH, Judge
Court No.: 02–00593

[Plaintiff's Motion for Summary Judgment/Judgment on the Pleadings is denied. Defendant's Cross-Motion for Summary Judgment and or Judgment on the Pleadings is granted.]

Decided: August 3, 2004

Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP, (Steven P. Florsheim), for Plaintiffs.

Peter D. Keisler, Assistant Attorney General; *Barbara S. Williams*, Attorney in Charge; *Jack S. Rockafellow*, Trial Attorney, Civil Division, Commercial Litigation Branch, U.S. Department of Justice; *Edward N. Maurer*, Of Counsel, Office of Assistant Chief Counsel, International Trade Litigation, U.S. Customs and Border Protection, for Defendant

OPINION

WALLACH, Judge:

I
Introduction

This matter is before the court on cross-motions for summary judgment, pursuant to USCIT R. 56, by Plaintiff, Orlando Food Corp. ("Orlando"), and Defendant, United States. At issue is the interest accrued from the United States Customs Service's[1] ("Customs") assessment of 100% *ad valorem* duties on Plaintiff's importation. The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1581(a) (1999). For the foregoing reasons, Plaintiff's Motion for Summary Judgment/Judgment on the Pleadings ("Plaintiff's Motion") is denied and Defendant's Cross-Motion for Summary Judgment and or Judgment on the Pleadings ("Defendant's Cross-Motion") is granted.

II
Background

On July 14, 1989, Plaintiff imported Entry No. 788–1003306–4, which consisted of a single entry of a canned tomato product.[2] The merchandise in Entry No. 788–1003306–4 was entered under Sub-

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[1] Now the United States Bureau of Customs and Border Protection.

[2] This case involves the same importer and goods that were in issue in the *Orlando* cases. Familiarity with those decisions is presumed. *See Orlando Food Corp. v. United States*, 21 CIT 187, *aff'd on other grounds*, 140 F.3d 1437 (Fed. Cir. 1998).

heading 2002.10.00 of the Harmonized Tariff Schedule of the United States ("HTSUS") (1989), which provided for "Tomatoes, prepared or preserved otherwise than by vinegar or acetic acid: Tomatoes, whole or in pieces," but was subject to duty at the rate of 100% *ad valorem* set forth in Subheading 9903.23.15, which provided for "Articles the product of the European Community . . . : Tomatoes, prepared or preserved (except paste) otherwise than by the processes specified in chapters 7 or 11 or in heading 2001 (provided for in subheading 2002.10.00, 200.90.00 or 2103.20.40)" in lieu of the rate set forth in Subheading 2002.10.00.

The entry was liquidated "as entered," with the merchandise classified under Subheading 2002.10.00 as "Tomatoes, whole or in pieces" and assessed the duty at 100% *ad valorem* pursuant to Subheading 9903.23.15. Plaintiff did not protest the initial liquidation of Entry No. 788–1003306–4. Plaintiff challenged this classification on entries that it had protested to Customs in *Orlando Food Corp. v. United States*, 21 CIT 187 (1997) ("*Orlando I*"), *aff'd on other grounds*, 140 F.3d 1437 (Fed. Cir. 1998) ("*Orlando II*"). Plaintiff challenged Customs' classification and the court held that the correct classification was 2103.90.60, dutiable at a rate of 7.5%.[3] After Plaintiff prevailed, it sought and received legislative redress for its entries that had not been protested. Plaintiff's Motion at 4. As a result of Plaintiff's efforts, Congress passed the Tariff Suspension and Trade Act of 2000, Pub. L. 106–476, § 1408(a)[4], 114 Stat. 2101, 2148

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[3] In *Orlando II*, the government appealed this court's decision that the product was classifiable under HTSUS, Subheading 2103.60.90, "Sauces and preparations therefor: Other" The Federal Circuit affirmed, however, it arrived at its decision by a different method than did the trial court. The Federal Circuit's decision did not affect the substantive outcome.

[4] Sec. 1408 Certain Entries of Tomato Sauce Preparation in its entirety states:

(a) In General — Notwithstanding section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law and subject to the provisions of subsection (b), the United States Customs Service shall, not later than 180 days after the receipt of the request described in subsection (b), liquidate or reliquidate each entry described in subsection (d) containing any merchandise which, at the time of the original liquidation, was classified under subheading 2002.10.00 of the Harmonized Tariff Schedule of the United States (relating to tomatoes, prepared or preserved) at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60 of the Harmonized Tariff Schedule of the United States (relating to tomato sauce preparation) on the date of entry.

(b) Requests — Reliquidation may be made under subsection (a) with respect to an entry described in subsection (d) only if a request therefor is filed with the Customs Service within 90 days after the date of the enactment of this Act and the request contains sufficient information to enable the Customs Service to locate the entry or reconstruct the entry if it cannot be located and to confirm that the entry consists of tomato sauce preparations properly classifiable under subheading 2103.90.60 of the Harmonized Tariff Schedule of the United States.

(c) Payment of Amounts Owed — Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 180 days after the date of such liquidation or reliquidation.

(Nov. 9, 2000). The Act required Customs to reliquidate the entry at issue according to HTSUS subheading 2103.90.60, which the courts had found applicable in the previous *Orlando* cases. Customs reliquidated the entry at issue, however, it did not pay interest on those duties.

III
Arguments

Plaintiff argues that it is entitled to interest on the refunded amount of duties it received. It claims that Customs is legally obligated to pay interest when, either upon liquidation or reliquidation, Customs has determined that an importer is owed a refund for an overpayment of estimated duties.

Defendant claims that the issue is whether Plaintiff is entitled to interest on duties refunded pursuant to special legislation enacted in the Tariff Suspension and Trade Act of 2000. Defendant's Cross-Motion at 1–2. It argues that Customs may not legally pay interest on refunds of duties made pursuant to § 1408 of the Tariff Suspension and Trade Act of 2000. *Id.* at 5.

IV
Applicable Legal Standards

The court reviews Customs' denial of a protest *de novo*. *See Rheem Metalurgica S/A v. United States*, 20 CIT 1450, 1456 (1996). Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." USCIT R. 56(c); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). The movant bears the burden of producing evidence showing the lack of any genuine issue of material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 324–25, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986); *see also Precision Specialty Metals, Inc. v. United States*, 182 F. Supp. 2d 1314, 1318 (2001). In determining if a party has met its burden, the court does not "weigh the evidence and determine the truth of the matter," but rather the court determines "whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249. The court views the evidence in the light most favorable to the non-moving

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(d) Affected Entries — The entries referred to in subsection (a) are as follows:

Entry Number	Entry Date
. . .	
788–1003306–4	07/14/89

party and draws all inferences in the nonmovant's favor. *United States v. Diebold, Inc.*, 369 U.S. 654, 655, 82 S. Ct. 993, 8 L. Ed. 2d 176 (1962).

When examining the government's statutory interpretation, if the relevant statute is clear on its face, the court must follow Congressional intent, regardless of the government's interpretation. *See Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842–43, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984). The deference to an agency administering its own statute varies with the surrounding circumstances and the courts must look to the agency's care, consistency, formality, expertise, and persuasiveness in ruling on the agency's interpretation. *See United States v. Mead Corp.*, 533 U.S. 218, 228, 121 S. Ct. 2164, 150 L. Ed. 2d 292 (2001). "Agency interpretations which lack the force of law are 'entitled to respect . . . but only to the extent that those interpretations have the "power to persuade."'" *Precision*, 182 F. Supp. 2d at 1318–1319 (citing *Christensen v. Harris County*, 529 U.S. 576, 587, 120 S. Ct. 1655, 146 L. Ed. 2d 621,(2000)) (internal citations omitted).

V
Discussion

Plaintiff claims that the Government must afford interest on its entry of goods that was reliquidated under § 1408 of the Tariff Suspension and Trade Act of 2000. Defendant conversely argues that the Government has no such obligation.

A party suing the Government faces the initial burden of showing that a waiver of sovereign immunity was expressed unequivocally in the statutory text at issue. *See, e.g., United States v. Nordic Vill., Inc.*, 503 U.S. 30, 33–34, 37, 112 S. Ct. 1011, 117 L. Ed. 2d 181 (1992). When a court examines a purported waiver of sovereign immunity, it must "[construe] ambiguities in favor of immunity." *United States v. Williams*, 514 U.S. 527, 531, 115 S. Ct. 1611, 131 L. Ed. 2d 608 (1995). The conditions under which the Government consents to be sued are limited, and no exceptions to those conditions are implied. *Lehman v. Nakshian*, 453 U.S. 156, 161, 101 S. Ct. 2698, 69 L. Ed. 2d 548 (1981). Accordingly, the legislative history of the statute at issue cannot supply a waiver that does not appear explicitly in its text. *Nordic Vill.*, 503 U.S. at 37.

"In the absence of express congressional consent to the award of interest separate from a general waiver of immunity to suit, the United States is immune from an interest award." *Library of Congress v. Shaw*, 478 U.S. 310, 314–15, 106 S. Ct. 2957; 92 L. Ed. 2d 250 (1986). In *Shaw*, the Supreme Court stated that "[t]his requirement of a separate waiver reflects the historical view that interest is an element of damages separate from damages on the substantive claim." *Id.* (internal citations omitted). Furthermore, the Court explained that for well over a century, the Supreme Court, agencies,

and Congress "consistently have recognized that federal statutes cannot be read to permit interest to run on a recovery against the United States unless Congress affirmatively mandates that result." *Id.* This "no-interest rule" thus requires the court "to construe waivers of sovereign immunity strictly in favor of the sovereign." *Hartog Foods Int'l, Inc. v. United States*, 291 F.3d 789, 791 (Fed. Cir. 2002); *see Shaw*, 478 U.S. at 318; *see, e.g., Williams*, 514 U.S. at 531. An awarding of interest can only occur when the U.S. Code unambiguously allows it. *Lena v. Pena*, 518 U.S. 187, 192, 116 S. Ct. 2092, 135 L. Ed. 2d 486 (1996).

Plaintiff asks the court to require the government to afford it interest on goods reliquidated under § 1408(a), which requires that Customs "liquidate or reliquidate" the subject entry "at the rate of duty that would have been applicable to such merchandise if the merchandise had been liquidated or reliquidated under subheading 2103.90.60. . . ." Section 1408 "essentially requires Customs – upon request of the importer – to liquidate or reliquidate specified entries as if they had originally been entered under the classification held correct by the court in *Orlando*." Defendant's Cross-Motion at 2–3. Plaintiff argues that 19 U.S.C. § 1505 (2000) applies and that interest accrued from the date it made its deposit.[5] Plaintiff claims that "Congress explicitly and unambiguously waived immunity for inter-

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[5] 19 U.S.C. § 1505 provides:

(a) Deposit of estimated duties, fees, and interest. Unless merchandise is entered for warehouse or transportation, or under bond, the importer of record shall deposit with the Customs Service at the time of making entry, or at such later time as the Secretary may prescribe by regulation, the amount of duties and fees estimated to be payable thereon. Such regulations may provide that estimated duties and fees shall be deposited before or at the time an import activity summary statement is filed. If an import activity summary statement is filed, the estimated duties and fees shall be deposited together with interest, at a rate determined by the Secretary, accruing from the first date of the month the statement is required to be filed until the date such statement is actually filed.

(b) Collection or refund of duties, fees, and interest due upon liquidation or reliquidation. The Customs Service shall collect any increased or additional duties and fees due, together with interest thereon, or refund any excess moneys deposited, together with interest thereon, as determined on a liquidation or reliquidation. Duties, fees, and interest determined to be due upon liquidation or reliquidation are due 30 days after issuance of the bill for such payment. Refunds of excess moneys deposited, together with interest thereon, shall be paid within 30 days of liquidation or reliquidation.

(c) Interest. Interest assessed due to an underpayment of duties, fees, or interest shall accrue, at a rate determined by the Secretary, from the date the importer of record is required to deposit estimated duties, fees, and interest to the date of liquidation or reliquidation of the applicable entry or reconciliation. Interest on excess moneys deposited shall accrue, at a rate determined by the Secretary, from the date the importer of record deposits estimated duties, fees, and interest or, in a case in which a claim is made under section 1520(d) of this title, from the date on which such claim is made, to the date of liquidation or reliquidation of the applicable entry or reconciliation. The Secretary may prescribe an alternative mid-point interest accounting methodology, which may be employed by the importer, based upon aggregate data in lieu of accounting for such interest from each deposit data provided in this subsection.

est awards on 'excess monies deposited' in the Mod Act, 19 U.S.C. §§ 1505(b) and (c), which became effective December 8, 1993." Plaintiff's Motion at 5. Plaintiff claims that "it deposited more duties on the subject entry than was required by law, and did so pursuant to a misclassification that the Government subsequently rectified by the Trade Act of 2000." *Id.* at 7.

Section 1505(b) "unambiguously waives sovereign immunity only for interest awards on 'excess moneys deposited.' " *Hartog Foods*, 291 F.3d at 792. Section 1505(c) "explains how to calculate interest on the 'excess moneys deposited.' " *Id.* This statute, however, does not define "excess moneys deposited." *See id.* The court in *Hartog Foods* explained that "[t]he Oxford English Dictionary defines 'excess' as 'beyond the usual or specified amount; beyond what is necessary, proper or right.' " *Id.* (citing Oxford English Dictionary (2d ed. 1989)). The court stated that the dictionary definition was consistent with the interpretation of 19 U.S.C. § 1520(a)(1) (2000), which "authorizes refunds on 'excess deposits' 'whenever it is ascertained on liquidation or reliquidation of an entry or reconciliation that more money has been deposited or paid as duties than was required by law to be so deposited or paid.' "[6] *Id.* Ultimately, the court stated that both the case law and the ordinary meaning of "excess" "lead to the same conclusion — 'excess moneys deposited' refers to an overpayment of estimated duties, i.e., the deposit or payment of money beyond legal requirements." *Id.*

Customs determines overpayments at liquidation or reliquidation. 19 U.S.C. § 1505(b); *Hartog Foods*, 291 F. 3d at 792. Thus, overpayment by an importer cannot be determined until the goods are either liquidated or reliquidated. Accordingly, the basis upon which interest might be due must also be determined at liquidation or reliquidation even though a deposit in excess of the amount owed may have occurred at the time of deposit. *See Travenol Labs., Inc. v. United States*, 118 F.3d 749, 753 (Fed. Cir. 1997); *Hartog Foods*, 291 F.3d at 792. The importer thus

> makes a payment that is not identified as excess until liquidation or reliquidation. In a typical case, the importer pays estimated duties under a Harmonized Tariff Schedule of the United States (HTSUS) provision only to find — upon correct

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(d) Delinquency. If duties, fees, and interest determined to be due or refunded are not paid in full within the 30-day period specified in subsection (b) of this section, any unpaid balance shall be considered delinquent and bear interest by 30-day periods, at a rate determined by the Secretary, from the date of liquidation or reliquidation until the full balance is paid. No interest shall accrue during the 30-day period in which payment is actually made.

[6]The Federal Circuit also noted that both §§ 1505 and 1520 are codified under part III, which is entitled "Ascertainment, Collection and Recovery of Duties," subtitle III of the Tariff Act of 1930. 19 U.S.C. §§ 1481 – 1529 (2000). *Hartog Foods*, 291 F.3d at 792.

> classification under a different HTSUS provision – the initial deposit was excessive. In such a case, Customs refunds the difference between the initial deposit and the required amount (i.e., the excess) with interest.

Hartog Foods, 291 F. 3d at 792–93.

Here, however, Congress legislated a special provision, § 1408, in order that Commerce would reliquidate Plaintiff's product under a different subheading of the HTSUS than it had been previously. Section 1408(c) makes no mention of interest upon reliquidation:

> (c) Payment of Amounts Owed — Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a) shall be paid not later than 180 days after the date of such liquidation or reliquidation.

Section 1408's language, as Defendant points out, should be contrasted with five other sections in the same statute (emphasis added):

> Section 1402(b) Payment of Amounts Owed — Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a), **with interest** provided for by law on the liquidation or reliquidation of entries, shall be paid by the Customs Service within 90 days after such liquidation or reliquidation.
>
> Section 1403(b) Payment of Amounts Owed — Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a), **with interest** accrued from the date of entry, shall be paid by the Customs Service within 90 days after such liquidation or reliquidation.
>
> Section 1407(a) In General . . . [T]he Customs Service shall—
>
> . . .
>
> (2) within 90 days after such liquidation or reliquidation, refund any duties paid with respect to such entries, **including interest** from the date of entry.
>
> Section 1412(b) Payment of Amounts Owed — Any amounts owed by the United States pursuant to the liquidation or reliquidation of the entry under subsection (a), **with interest** accrued from the date of entry, shall be paid by the Customs Service within 90 days after such liquidation or reliquidation.
>
> Section 1425(b) Payment of Amounts Owed — Any amounts owed by the United States pursuant to the liquidation or reliquidation of an entry under subsection (a), **with interest** provided for by law on the liquidation or reliquidation of en-

> tries, shall be paid by the Customs Service within 90 days after such liquidation or reliquidation.

While the aforementioned sections specifically contain language that require Customs to pay interest, the remaining §§ 1401–1425 of Subsection B, Chapter 1 Liquidation or Reliquidation of Certain Entries, do not contain similar interest granting language. It should be noted that §§ 1409–1411, which concern tomato products just like § 1408, are among those sections which do not refer to an interest entitlement. Under the canon of *expressio unius est exclusion alterius*[7], the inclusion juxtaposed with the omission of language directing Customs to pay interest in §§ 1401–1425 makes clear that § 1408 does not require Customs to pay Plaintiff any interest. If Congress had intended 19 U.S.C. § 1505's interest bearing provisions to then become operative, as Plaintiff suggests, it would not have been necessary to include the "with interest" language in some sections and not in others.

Overall, "no matter how unusual or compelling the facts of a case, sovereign immunity principles govern and permit interest only if the United States Code has expressly and unequivocally waived sovereign immunity and authorized such awards." *Hartog Foods*, 291 F.3d at 795. While 19 U.S.C. § 1505 requires the payment of interest for "excess moneys deposited," the court must construe the term "strictly" and "cannot broaden the meaning of such term through judicial interpretation." *Id.* If Congress had wished extend the reach of 19 U.S.C. § 1505 to reliquidation under § 1408, it should have explicitly included the requisite language. Section 1408 grants no interest and this court does not intend to broaden its scope: "sovereign immunity and the 'no interest' rule compel great specificity." *See Id.*

VI
Conclusion

For the foregoing reasons, Defendant's Cross-Motion For Summary Judgment And Or Judgment on the Pleadings is granted in full, and Plaintiff's Motion For Summary Judgment/Judgment on the Pleadings is denied.

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[7] The canon is defined as a "maxim of statutory interpretation meaning that the expression of one thing is the exclusion of another." Black's Law Dictionary 581 (6th ed. 1990).

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